Quarterly Report

of the

ATTORNEY GENERAL

of

ALABAMA

For The Period

From July 1, 1963

Through September 30, 1963

VOLUME 112

RICHMOND M. FLOWERS, Attorney General

T. O. "Tillie" Walker

QUARTERLY REPORT

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TO THE STATE, COUNTY, AND MUNICIPAL OFFICERS OF ALABAMA:

This Quarterly Report of the Attorney General of Alabama, which includes all official opinions rendered by the Attorney General from July 1, 1963 through September 30, 1963, is published in compliance with the provisions of Title 55, Section 228, Code of Alabama 1940.

Under this section of the Code, I am required to send seven copies of this Quarterly Report to each judge of probate in the State and the judge of probate, in turn, is required to deliver one copy each to the clerk of the circuit court, the sheriff, the tax collector, the tax assessor, the county superintendent of education, and the deputy or county solicitor of his county. This section also requires that I send a copy of this report to each circuit solicitor and the chief executive officer of each incorporated municipality in the State.

The office of the Attorney General is anxious to render prompt and efficient service to the State, county, and municipal officials. If you have any suggestions to make regarding the improvement of the service, I shall be glad to hear from you.

Sincerely,

RICHMOND M. FLOWERS

Attorney General

RICHMOND M. FLOWERS
Attorney General

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OPINIONS

July 1, 1963

Honorable Leo Williams, Chairman
Calhoun County Board of Education
Anniston, Alabama

Schools — Taxation — Funds — County Board of Education

1. County Board of Education may erect football stadium to be used in furtherance of its system of physical education and issue capital outlay warrants, pledging as security proceeds of three-mill county wide tax.

2. County Board of Education may accept donations and pledges toward payment of football stadium to be used in furtherance of its system of physical education.

Opinion by Assistant Attorney General Madison.

Dear Mr. Williams:

Your request for an official opinion bearing date of June 25, 1963 is as follows:

"Oxford High School in the town of Oxford is a County School under the supervision and control of the Calhoun County Board of Education.

"The citizens of Oxford are very enthusiastic in their desire for a football stadium. The cost of the proposed stadium is estimated at $116,225.00.

"The Oxford Boosters Club has on hand $16,139.77, and has pledged an additional $51,635.00. The Calhoun County Board of Education has been urged to issue bonds for approximately $51,700.00 with the three mill tax receipts of the County to be security for the bonds.

"The proposal for repayment is as follows:

"(a). Of the first $16,000.00 each year in gate receipts $3,200.00 is to be assigned to the amortization of the indebtedness.

"(b). 75% of any gate receipts in excess of $16,000.00 will also be assigned to the amortization of the bond issue.

"(c). Should gate receipts fall short of $16,000.00 the amount would be proportionate.

"(d). Citizens of Oxford have signed endorsements to the proposed bond issue guaranteeing the repayment in the amount of $51,700.00.

"The plans for the stadium call for dressing rooms and other physical education facilities underneath the stands. Our questions are as follows:

"1. Can the Calhoun County Board of Education legally pledge its three mill tax receipts as security for a bond issue for the purpose of building a football stadium for Oxford's Calhoun County High School?

"2. Can Calhoun County legally accept from the Oxford Boosters Club the $16,139.77 cash and $51,635.00 pledged toward building of a County School facility?

"It appears that this plan will provide an excellent facility for the school without actual outlay of funds by the County, if the plan is legally acceptable.

"Your prompt reply by formal opinion will be greatly appreciated."

In Quarterly Report of Attorney General, Volume 42, page 50, it was ruled by this office that a county had authority to make a contribution for the erection of a concrete stadium, a permanent structure, on school grounds, for the use of the school in its activities.

Section 555, Title 52, Code of Alabama 1940, provides that every public school shall carry out a system of physical education, the character of which shall conform to the program or course outlined by the department of education.

It has been ruled by this office that an appropriation for the procurement of athletic equipment in furtherance of a course of physical training in a public school is "for the support of public schools" within the meaning of Section 207, Title 52, Code of Alabama 1940.

This office has also specifically ruled that proceeds from the sale of land earmarked for "constructing and repairing buildings, and for purchasing equipment for the school" to which the land was attached could be used by the City Board of Education of Athens, Alabama, to build a football stadium in the promotion of the physical educational program of the school. Quarterly Report of Attorney General, Volume 19, page 48.

It is being assumed by this office in facilitating the release of this opinion that your request refers to the county wide three-mill tax

and to the capital outlay warrants to be issued under the provisions of Article 4, Chapter 10, Title 52, Code of Alabama 1940, although you refer to bonds in inquiry.

Under Section 216, Title 52, Code of Alabama 1940, the county board of education may issue and sell capital outlay warrants for the purposes of erecting, purchasing, altering, enlarging, improving, repairing, and equipping school buildings and school playgrounds and pledge the said three-mill tax as security where voted for said purposes.

It is my opinion that the proposed football stadium comes within the purposes above stated in said Section 216, especially in view of the opinion reported in Volume 19, supra.

In addition, the Arizona Supreme Court as early as 1927 ruled that the statutory authority to issue bonds to build school houses includes stadiums for conducting athletic games where the statute permits the employment of teachers for physical education. **Alexander v. Phillips,** 31 Ariz. 503; 52 ALR 244. Even more reason therefor exists in 1963 and by virtue of said Section 555 providing that every public school shall carry out a system of physical education.

Both of your questions are answered in the affirmative with the proviso that the provisions of Article 4, supra, be complied with and no prior pledge or other valid reason exists which would prevent the pledge of the three-mill tax as security for the payment of the capital outlay warrants.

Section 71, Title 52, Code of Alabama 1940, seems to take for granted that donations may be received by the board of education. The wisdom of the plan and whether or not it should be done is a matter resting with the county board of education under the broad authority and discretion given by the statutes of Alabama.

Yours very truly,

RICHMOND M. FLOWERS
Attorney General

July 3, 1963

Honorable Andrew J. Cooper
Member, House of Representatives
Post Office Box 457
Tuskegee, Alabama

Jurors and Juries — Municipalities — Officers and Offices.

1. A councilman who is entitled to compensation holds an office of profit.

2. The clerk of a jury commission does not hold an office of profit.

3. A councilman may be employed as clerk of a jury commission.

Opinion by Assistant Attorney General Gish.

Dear Sir:

Your request for an official opinion, under date of June 27, 1963, is as follows:

"It is requested that I be furnished an opinion on the question as follows: Can an elected member on the City Council of a municipality located in Macon County, Alabama, serve concurrently as clerk to the Jury Commission within that County?

"It is respectfully requested that I be furnished your written opinion on this question. I will appreciate your kind consideration in regards to this matter."

In an opinion reported in Quarterly Report of Attorney General, Vol. 103, page 8, this office held that a member of a municipal council who is entitled to compensation for his services holds an office of profit within the meaning of the Constitution of Alabama 1901, Section 280, which prohibits, with certain named exceptions, the holding of two such offices at one and the same time. See also Title 41, Section 5, Subsection 7, Code of Alabama 1940.

However, the clerk of a county jury commission is a mere employee of the commission and does not hold such an office of profit. Quarterly Reports of Attorney General, Vol. 33, page 15, Vol. 46, page 165, and Vol. 83, page 14.

The duties of the two positions here considered are not incompatible.

Therefore, I am of the opinion that a member of the council of a municipality in Macon County may be employed as clerk of the jury commission of said County.

Very truly yours,

RICHMOND M. FLOWERS
Attorney General

July 12, 1963

Honorable Arnold Teks
City Attorney
City of Florence
Florence, Alabama

Municipalities.

Acquisition and use of property of a municipality to promote industrial development discussed.

Opinion by Assistant Attorney General Gish.

Dear Sir:

Your request for an official opinion, under date of June 19, 1963, is as follows:

"The Board of Commissioners of the City of Florence, Alabama, respectfully requests your opinion as to the validity of a municipality's purchasing and developing land to be used as an industrial park, for the purpose of promoting industrial and manufacturing plants.

"If your answer is in the affirmative, may the City acquire such property outside its city limits but within a 15-mile radius?

"If your answer is in the affirmative, may the City and County jointly acquire and develop property for such purpose?

"It is my opinion that, prior to September 15, 1961, the above questions would be answered in the negative, since the law was well-established that a municipal corporation may not acquire property for the purposes of investment or speculation or for the purpose of giving such land to those who construct manufacturing plants. (Powell v. City of Birmingham, 61 So. 2d 11, 258 Ala. 159; McQuillan 'Municipal Corporation,' 3d Edition, Vol. 10, Section 28.12).

"There is some question in my mind as to the full extent of the provisions of Title 37, Section 471(3) as approved September 15, 1961."

The statute to which your request refers is Act No. 300, Acts of Alabama 1961, page 2361, Section 1 of which reads as follows:

"In addition to all other powers which may be conferred on it by law, every incorporated city or town shall have the power to set aside, appropriate and use municipal funds or revenues for the purpose of developing, advertising and promoting the agricultural, mineral, timber, water, labor, and all other resources of every kind within its police jurisdiction, and for the purpose of locating and promoting agricultural, industrial, and manufacturing plants, factories, and other industries within the municipality, or elsewhere inside the county not more than 15 miles from the boundaries of the municipality."

I am of the opinion that the provisions of Act No. 300, supra, are not sufficiently broad to authorize a municipality to expend public money to purchase and develop an industrial park for the purpose of selling, leasing or giving the project to industrial plants.

Municipalities may issue bonds under Act No. 756, Acts of Alabama 1951, page 1307, to acquire, own and lease projects for the purpose of promoting industry. Like authority is granted to municipal industrial development boards by Act No. 648, Acts of Alabama 1949, page 991.

Therefore, you are advised that the City of Florence is not authorized by Act No. 300, supra, to purchase and develop the land to which your request refers. Such land may be acquired and used by said City to promote industry only as prescribed by Act No. 756, supra, or Act No. 648, supra.

Very truly yours,

RICHMOND M. FLOWERS
Attorney General

July 12, 1963

Honorable Reo Kirkland
Judge of Probate
Escambia County
Brewton, Alabama

Documentary Stamp Tax — Mineral Documentary Tax — Taxation.

Mineral documentary tax is due on number of acres specified in lease agreement and is not affected by unilateral affidavit or statement of intent.

Opinion by Assistant Attorney General Webb.

Dear Sir:

I have received your letter of June 28, 1963 in which you request my opinion as follows:

"In my capacity as Probate Judge of Escambia County, Alabama, I am in need of an advisory opinion from your office regarding the stamp tax to be collected by my office upon the recordation of mineral leases and mineral deeds.

"Act No. **861** was approved on the **8th** day of September, 1961, and provides in general as follows:

"1. On leases with a primary term of ten (10) years or less, documentary tax of five (5c) cents per mineral acre with a minimum charge of one dollar ($1.00).

"2. On leases with a primary term of more than ten (10) years, but not more than twenty (20) years, documentary tax of ten (10c) cents per mineral acre.

"3. On leases with a primary term in excess of twenty (20) years, documentary tax of fifteen (15c) cents per mineral acre.
"A problem has arisen in instances when a mineral lease has been filed for record which actually described a large amount of acreage although the mineral interest covered by the lease is only fractional. As an example, the mineral lease might describe one hundred twenty (120) acres of land although the mineral interest actually leased might be limited to a one-half (½) or even a smaller actual mineral interest upon which the documentary tax is declared to be due under Act 864.

"Attached hereto are photostatic copies of leases marked as exhibit 'A' and 'B' respectively, upon which you will note that there is no notation which reflects the true mineral acreage involved. In exhibit 'A' the lessee acquires an entire mineral interest in one hundred twenty (120) acres for a five (5) year term, there under the applicable rate of five (5c) cents per mineral acre the sum of six dollars ($6.00) was collected as documentary stamp tax.

"Under exhibit 'B' which describes seventy (70) acres of real estate documentary stamp tax of only one dollar ($1.00) was collected due to the fact that the lessee acquired only a one-sixteenth (1/16th) mineral interest which is taxed at a minimum of one dollar ($1.00).

"Lessees are reluctant to specify on the face of the leases the actual mineral acreage acquired and it has been the practice of this office to require documentary tax based upon the mineral interest declared to pass at the time of the recordation.

"The specific questions upon which this office desires classification are as follows:

"1. May the Probate Judge be relieved of financial responsibility in instances where documentary stamps are affixed in accordance with the mineral interest orally declared by the lessee to pass at the time of recording?

"2. May the Probate Judge be relieved of financial responsibility in instances where the lessee files an affidavit for record indicating the true mineral interest described in a given mineral lease?

"If this office is required to collect documentary tax upon total acreage described rather than upon the actual mineral acres leased, in many instances this will result in multiple taxation which is clearly not the intendment of Act No. 864."

Act No. 864, Acts of Alabama 1961, page 1346, mentioned by you, amended specified sections of Act No. 261, Acts of Alabama 1957, page 332. Act No. 261, supra, with amendments thereto, has been codified in the Code of Alabama Recompiled 1958, Pocket Parts, as Title 51, Section 16(10) through Section 16(17). Section 4 of Act No. 261, supra, as amended by Act No. 864, supra, provides, in essence, that any judge of probate who accepts or records an instrument upon which the tax is not paid in the amount required by the act shall be liable to the county for the amount of tax shown to have been due on the instrument. With this in mind, the question then arises from your letter as to whether or not the grantee by unilateral statement of intent may amend a lease granting a specified number of mineral acres. In my opinion, the answer to this question is in the negative.

Section 1 of Act No. 261, supra, specifically provides, in pertinent part, as follows:

"The terms 'mineral acre' and 'royalty acre' are each defined as the number of acres obtained by multiplying the aggregate acreage **described in the instrument** involved by the fractional interest leased or conveyed hereby." (Emphasis supplied.)

It is, therefore, my opinion that the number of acres and/or fractional intereset conveyed as described in the actual instrument of lease is the number to be taxed by you upon filing. Quarterly Report of Attorney General, Volume 89, page 22.

Of course, the parties could, by proper agreement, amend the actual lease instrument, in which case the agreement should be filed with the instrument itself and should conform in all regards to the laws regarding such instruments; i.e., description, bi-lateral signatures and consideration. Anything less than a legal amendment to the actual lease agreement, such as the unilateral affidavit filed with exhibit B to your letter, constitutes nothing more than a statement of intent by one party which could not affect the intent specified in he lease and, further, does not affect the tax due on the original instrument of lease. Such an affidavit, of course, may be filed for record, if the party wishes. However, the proper fees for filing therefor should be collected and, as stated, even though it is filed it could not affect the original instrument of lease. Affidavits, such as those suggested in your letter and as attached to your letter, should be used and considered by you only when the actual instrument of lease is ambiguous and uncertain as to the amount of property conveyed since the lease itself is the best evidence of the intention of the parties. See **Allen v. Genry,** 39 Ala. App. 281, 97 So. 2d 828.

Very truly yours,

RICHMOND M. FLOWERS
Attorney General

July 16, 1963

Honorable Philip Willingham
Chairman
Board of Commissioners
Sumter County
Livingston, Alabama

Cost and Fees—Sheriffs

The amount allowed under the provisions of Title 11, Section 100, for guard in removal of prisoners is an allowance not a fee.

Opinion by Assistant Attorney General Webb.

Dear Mr. Willingham:

I have received your letter of July 8, 1963 in which you request my opinion as follows:

"As Chairman of the Board of Commissioners of Sumter County

Ala. I wish to respectfully request your official opinion on the following matter in writing viz:

"Sumter County is in process of building a new jail. Prior to the demolition of the old jail prisoners confined in the old jail were removed to the Marengo County jail in Linden, Ala., and prisoners being committed since are being incarcerated in the jail at Linden. "The Sheriff of Sumter County in presenting his bills to the County for removal of prisoners as provided by Code of Alabama 1940, Title 11, Section 100, as amended, for his per diem and mileage as provided therein, also included an item of eight dollars for the services of the Deputy Sheriff acting as a guard.

"The Sumter County Deputy Sheriff is paid a salary by Sumter County as provided by Code of Alabama 1940, Title 54, Section 3, as amended.

"Will you kindly let us have at your earliest convenience your written opinion as to whether the Sumter County Deputy Sheriff may be legally appointed to act as a guard in such cases as above outlined, and the Sheriff allowed in his bill an item of eight dollars for the Deputy's services as a guard."

In my opinion, your question is answered in the affirmative. The allowance under Title 11, Section 100, for removing prisoners of eight dollars for each guard for each day engaged in such removal is in the nature of an allowance and not a fee. See **Stone v. State,** 197 Ala. 293, 72 So. 536.

The eight dollars allowed to the Sheriff and the guard have been treated by this office as being an allowance in the nature of a per diem. See Opinion of the Attorney General to Honorable W. A. Bratton, Sheriff, Sumter County, under date of May 31, 1963. You will note that under the provisions of Title 11, Section 100, the Sheriff receives mileage in the event that he travels in his private automobile or he receives travel expense in the event that some other type of conveyance is used. The per diem allowance of eight dollars for the Sheriff and for the guard takes the place of any other expense or items of expense incurred by the Sheriff and his Deputy, such as food and lodging. The allowance is, thus, a reimbursement on a flat basis and does not constitute a fee or salary for services rendered. Thus, in my opinion, it is immaterial that the Deputy, retained as a guard in this case, is on a salary basis paid by the county.

Very truly yours,

RICHMOND M. FLOWERS
Attorney General

July 16, 1963

Honorable Estes R. Flynt
Judge of Probate
Lauderdale County Court House
Florence, Alabama

License Taxes — Wholesale Soft Drink Dealers

1. Where a wholesale soft drink dealer (who is not a bottler in this State and licensed as such) sells to retailers soft drinks off a truck he must pay the license levied under Title 51, Section 483, Code of Alabama 1940, Recompiled 1958, in each county in which he sells to retailers such drinks off a truck, and must also pay the regular transient dealer's license levied under Title 51, Section 609, Code of Alabama 1940, Recompiled 1958, of $30.00 to the State in one county and $5.00 to the county in each county in which he sells the drinks off a truck.

2. Where such a dealer or his agents merely solicit or take orders from retailers for soft drinks to be filled by future deliveries by truck or otherwise, Section 609, supra, expressly provides that the transient dealer's license would not be due under the circumstances; nor would any additional wholesale dealer's license under Section 483, supra, be due under the same circumstances, where the dealer has purchased an initial license under Section 483, and does not have an established place of business in another county or sell off a truck in another county.

3. The opinions of this office reported in Biennial Report of the Attorney General, 1936 through 1938, page 668, and Quarterly Reports of the Attorney General, Volume 11, page 126, and Volume 17, page 49, are distinguished in part accordingly by this opinion.

Opinion by Assistant Attorney General Burton.

Dear Sir:

Your request for an official opinion bearing date of May 31, 1963, is as follows:

"G. F. Wilson Company of Florence, Alabama, purchased in Lauderdale County a privilege license to sell non-alcoholic carbonated soft drinks at wholesale under Title 51, Section 483, Code of Alabama.

"Since wholesale drink license under Section 483 and soft drink bottlers license under Section 476 are related in that bottlers do not have to have wholesale dealer license nor do the bottlers have to purchase a license in every county that they do business, do wholesale soft drink dealers have to purchase a license under Section 483 in every county in which they conduct their business."

In the first place, it is well to state that in the case of a bottler who maintains a bottling plant in Alabama, and who has paid the bottler's license under Title 51, Section 476, Code of Alabama 1940, Recompiled 1958, he is expressly exempted under Title 51, Section 483, Code of Alabama 1940, Recompiled 1958, from the payment of the wholesale dealer's license levied under Section 483 and the transient dealer's license levied under Section 609, supra. We are, therefore, not concerned with such a bottler in this opinion, as it will be confined to the wholesale dealer in cereal beverages, carbonated or other soft drinks who is not a bottler or who does not maintain a bottling plant within the State of Alabama.

In an official opinion reported in Biennial Report of the Attorney General, 1936—1938, page 668, this office held that a person engaged in the business of selling soft drinks at wholesale from trucks to retailers was due to pay what is now the license levied under Title 51, Section 483, Code of Alabama 1940, Recompiled 1958, of $50.00 to the State and one-half of that amount to the county in each county in which he so sells the soft drinks off a truck. See also Quarterly Reports of the Attorney General, Volume I, page 255, Volume 11, page 126, and Volume 17, page 49. Moreover, that such a dealer selling off a truck to retailers would also owe what is now the transient dealer's license under Title 51, Section 609, Code of Alabama 1940, Recompiled 1958. That is, he would owe a transient dealer's license of $30.00 to the State in one county and a county license of $5.00 in each county in which he so sells off the truck, in addition to the wholesale dealer's soft drink license. Title 51, Section 838 and 839, Quarterly Reports of the Attorney General, Volume 11, page 126, and Volume 17, page 49.

In construing the statutes involved under the facts as so related, the opinions just cited and referred to treat the selling from a truck to be practically the same as selling from a place of business in the county, particularly where a stock of merchandise is carried on the truck for the purpose of being sold therefrom.

It is also my understanding that the Department of Revenue has followed these opinions over the years as a matter of administrative interpretation of these statutes and also as a matter of practice in the enforcement of these licenses, where the sale is made from a stock of merchandise carried on the truck. Such long established administrative interpretation and application of a statute by the agency charged with its administration and enforcement is also said to be entitled to great

weight in determining the meaning of the statute and should not be overturned unless found to be palpably wrong. **Dixie Coaches, Inc. v. Ramsden,** 238 Ala. 285, 190 So. 92, 94. **Odum Lumber Company, Inc. v. Southern States Iron Roofing Company,** 36 Ala. App. 270, 58 So. 2d 641. **State v. H. M. Hobbie Grocery Company, 225 Ala.** 151, 142 So. 46. **Waters v. State,** 25 Ala. App. 144, 142 So. 113. **Great Northern Life Insurance Company v. Read,** 136 F. 2d 44, 47, etc.

In fact, our Alabama Supreme Court has held that the wholesale soft drink dealer's license under what is now Section 483, supra, can be validly collected and applied under the circumstances in the case of a non-resident corporation, which had a bottling plant in Mississippi, but which did not maintain a plant in Alabama, and which sold to retailers only from its trucks in Alabama the soft drinks which it bottled in Mississippi. The Court in this respect held the selling from the truck or trucks to be a separable local event contemplated by said taxing statute and taking place within the county and within this State which even can be validly taxed without burdening interstate commerce. **State v. Coca Cola Bottling Works,** 29 Ala. App. 508, 198 So. 363. See also Quarterly Report of the Attorney General, Volume 17, page 49.

The foregoing being considered, your question is answered to the effect that if the wholesale dealer (who is not a licensed bottler in this State) is selling the soft drinks from his truck or trucks, he would owe both the wholesale dealer's license under Section 483, and the transient dealer's license under Section 609, in each county where he is selling the soft drinks from a truck at wholesale; that is, to retailers.

A distinction, however, seems to have been clearly drawn between cases where the wholesale dealer sells off a truck and where he or his agents merely solicit or take orders to be filled by later deliveries by truck or otherwise, where the orders are accepted.

In the later case and where the orders are taken exclusively for future deliveries, it seems well established that there would not be any liability for the transient dealer's license under Title 51, Section 609, Code of Alabama 1940, Recompiled 1958. In fact, Section 609, supra, expressly so provides. The same would also appear to be true as to any additional wholesale soft drink dealer's license under Section 483, supra, where the dealer has purchased an initial license to enjoy this privilege, and does not have an established place of business in any other county and does not sell off a truck in any other county. I am informed that this also has been the long established interpretation of these statutes by the State Department of Revenue, and that they have been for several years applied by that Department accordingly. Also see **Family Discount Stamp Company v. State** (decided March 22, 1962), 148 So. 2d 218, 220, **Metcalf v. Sperry & Hutchinson Company,**

268 Ala. 623, 108 So. 2d 831, **Jewel Tea Company v. Grettenberger,** 335 Mich. 673, 57 N.W. 2d 425, etc.

Very truly yours,

RICHMOND M. FLOWERS
Attorney General

July 17, 1963

Hon. Ed Pepper
Commissioner
Alabama Public Service Commission
CAPITOL

Words and Phrases — Public Safety Department — Motor Vehicles.

1. The maximum "axle" weight of any one axle on a vehicle is 19,800 lbs. Title 36, Section 89, Subsection (d) (1) (4), Code of Alabama 1940, Recompiled 1958.

2. The maximum "gross" weight of a vehicle is 64,650 lbs. for a distance of 45 feet from the first to the last axle. Title 36, Section 89, Subsection (c) (d) (3), Code of Alabama 1940, Recompiled 1958.

Opinion by Assistant Attorney General Bradley.

Dear Sir:

Your request for an official opinion, bearing date of May 13, 1963, is as follows:

"It has come to my attention that there is some confusion as to the legal maximum gross vehicle weight on the highways of the State of Alabama without special permit. More particularly, I refer to the provisions of Title 36, §89(d) (1), (2), (3), (4) of the Code of Alabama Recompiled 1958.

"I interpret these referred-to subsections of §89 to state that the maximum gross vehicle weight on the highways of the State of Alabama is 64,650 pounds. Although there is a ten percent tolerance or margin of error provided by subsection (4), this tolerance or margin of error is on axle weight and does not apply to the gross vehicle weight.

"In order to fairly and justly perform the duties and powers conferred upon me by law as a member of the Alabama Public Service Commission, I hereby request your official opinion as Attorney General of the State of Alabama as to the legal meaning and construction of the above-referred-to subsections of Title 36, §89."

As requested by you, my opinion will concern itself with the meaning of "maximum gross vehicle weight" and "gross axle weight" as provided in Title 36, Section 89, Subsection (d) (1) (2) (3) and (4), Code of Alabama 1940, Recompiled 1958.

As provided by Title 36, Section 89, Subsection (d) (1) and (4), Code of Alabama 1940, Recompiled 1958, the maximum weight that may be imposed on the highway by the wheels of any one axle of a vehicle is 18,000 lbs. plus a 10% margin of error, or a total of 19,800 lbs.

Subsection (3) of said Section 89, supra, provides a table of weights to distances which cannot be exceeded. The maximum distance between the first and last axle of a vehicle or combination of vehicles is 45 ft. and the maximum weight for all axles of a vehicle with a distance of 45 ft. is 64,650 lbs.

It will be noted that a vehicle that exceeds the distances and weights prescribed in the table of Subsection (3), supra, must have a special permit before it can operate on the highways of Alabama.

It is my opinion that the maximum "axle" weight is 19,800 lbs. and the maximum "gross" weight of the vehicle is 64,650 lbs.

For example, if there are two load bearing axles, the weight could not exceed 39,600 lbs. on the two axles. If there were four load bearing axles, the total "axle" weight would be 79,200 lbs.; yet the distances to weight as set out in the table of Subsection (d) (3) of Section 89, supra, will reduce the maximum "vehicle" weight that could be lawfully carried on the highways of Alabama to 64,650 lbs. It thus becomes apparent that one measurement of weight acts as a limit on the other measurement of weight.

In construing Title 36, Section 89, Subsection (d) (1) (2) (3) and (4), Code of Alabama 1940, as Recompiled 1958, I also considered Title 23, Section 127, U. S. C. A. which provides a weight limitation for vehicles using the Federal Interstate System of highways. The weight limitation provided by Federal law for vehicles using the Interstate highways is 18,000 lbs. per axle or an overall gross weight of 73,280 lbs. Any State which authorizes a greater weight limitation is subjecting itself to loss of Federal matching funds for highway construction on the Interstate system. However, Title 23, Section 127, U. S. C. A. does not apply in Alabama at the present time for the reason that our

weight statute (Title 36, Section 89, et seq.) was enacted prior to July 1, 1956. The Federal statute (Title 23, Section 127, U.S.C.A.) specifically exempts states with weight statutes enacted prior to July 1, 1956, from the effect of its provisions.

Yours very truly,

RICHMOND M. FLOWERS
Attorney General

July 19, 1963

Dr. J. S. Tarwater,
Superintendent, Alabama State Hospitals
Tuscaloosa, Alabama

Alabama State Hospitals — Alabama Insane Hospitals — Funds — Appropriations.

1. The Board of Trustees of Alabama State Hospitals does not now have authority to purchase sites in sections of the State of Alabama other than Mobile County and Tuscaloosa County and authority to erect buildings thereon for the treatment of the mentally ill; nor authority to pay for same from funds which have been or may hereafter be set aside under existing law for capital outlay or appropriated for capital outlay purposes.

2. A part of the per diem patient per capita maintenance appropriations may not be used for staffing, equipping and operating the supplemental or regional hospitals referred in 1, above.

Opinion by Assistant Attorney General Madison.

Dear Sir:

Your request for an official opinion bearing date of July 12, 1963, is as follows:

"Please advise me as to whether in your opinion, under the provisions of Section 190 of Title 45 of the 1940 Code of Alabama, the Board of Trustees of Alabama State Hospitals has the authority:
"(1) To use, in the purchase of sites in sections of the State of Alabama other than Tuscaloosa County and in erecting buildings

thereon to be used as supplement or regional hospitals for the treatment of the mentally ill, funds which have been or may hereafter be set aside by the Board of Trustees for capital outlay, or appropriations by the Legislature to the Hospitals for capital outlay purposes; and

"(2) After such sites have been acquired and buildings constructed, to use a part of the per diem patient per capita maintenance appropriations for the purpose of staffing, equipping and operating the said supplemental or regional hospitals."

It is provided by Section 189, Title 45, Code of Alabama 1940, that **Bryce hospital located in Tuscaloosa County** and the **Searcy hospital located in Mobile County** are continued under the management and control of the board of trustees of the Alabama State Hospitals.

Under Section 190, Title 45, Code of Alabama 1940, the Governor of Alabama with seven trustees are constituted a public corporation, under the name of Alabama State Hospitals.

The said corporation has possession and control of all real and personal property **belonging to either hospital;** the right to contract and sue and power to sell and convey any real property of **the hospitals.**

In addition, under Section 190, supra, the board of trustees has power to manage and control **any other allied institutions,** such as places for the care and treatment of inebriates, epileptics, harmless dements, the feeble-minded and the like which may be at any time **confided to them by law.**

The first sentence of Section 229, Title 45, Code of Alabama 1940, provides:

"For the support, maintenance, repairs and improvement of the Alabama state hospitals, such amount as shall be appropriated by the legislature in the general appropriation bill which sum shall be paid monthly every year by the state for every one of all the indigent and criminal, that the superintendent certifies were present **in the hospitals** on the last day of the preceding month." (Emphasis supplied).

The general appropriation bill for the fiscal year ending September 30, 1962 provides for the support, maintenance and repair of the Alabama State Hospitals for the sum of $2.50 per patient estimated to be $6,798,125.00. The estimated amount for the fiscal year ending September 30, 1963, is $6,843,750.00. General Acts 1961, page 1849. It seems rather conclusive that the estimated amounts were based upon data relating to the hospital under control of the trustees when the

appropriations were made.

Additional and related institutions on new sites could greatly increase the $2.50 per patient charge against the general fund far beyond the estimated amounts above enumerated.

If there was no increase in the estimated amounts, it might result in part thereof being used in other places and on other sites, thereby decreasing the amounts available for the Tuscaloosa and Mobile County institutions.

An examination of the Acts, starting with General Acts of Alabama 1851-52, page 10, reveal no express statutory authority for an affirmative answer to your two questions. It is my opinion that additional legislation is necessary and in the absence thereof both questions should be answered in the negative.

The underscored portions of this opinion tend to show that no such authority in the trustees now exists and especially that part that refers to control of allied institutions "confided to them by law."

Very truly yours,

RICHMOND M. FLOWERS
Attorney General

July 19, 1963

Honorable Albert Boutwell
Mayor, City of Birmingham
Birmingham, Alabama

Municipalities — Officers and Offices.

The City Council of the City of Birmingham is authorized to appoint the recorders of said City.

Opinion by The Attorney General

Dear Sir:

Your request for an official opinion, under date of July 16, 1963, is as follows:

"A written opinion is hereby requested for and on behalf of the

governing body of the City of Birmingham relative to the appointment of a Recorder for said City under the provisions of Act No. 457, Local Acts 1947, page 319.

"As you know, the City of Birmingham was governed by a City Commission when Act No. 457, supra, was enacted, and said City is now governed by a Mayor and City Council.

"Is the City Council authorized to appoint a Recorder under the provisions of Act No. 457, supra, or is such authority vested in the Mayor?

"Our request for an opinion dated June 11, 1963, is hereby withdrawn."

Section 1 of Act No. 457, Local Acts 1947, page 319, reads in part as follows:

"That from and after November 1st, 1947, all Recorders of the City of Birmingham regularly assigned to the trial of causes involving violation of any of the ordinances of the City of Birmingham, statutes of the State of Alabama, or any other law, shall be appointed for terms of four (4) years in the manner and under the conditions following, to-wit: A. Such appointments shall be made by a majority vote of the members of the City Commission or other governing body of the City of Birmingham, with the advice of: (1) President of the Birmingham Bar Association and (2) a judge of the Circuit Court for the Tenth Judicial Circuit of Alabama regularly assigned to the trial of appeals to said Court from the Recorder's Court of the City of Birmingham..."

The City of Birmingham has a Mayor-Council form of government under the provisions of Act No. 452, Acts of Alabama 1955, page 1004. Prior to April 15, 1963, said municipality was governed by a City Commission.

By virtue of Act No. 452, supra, the City Council of the City of Birmingham has all the powers, rights and privileges, not in conflict with the provisions of said Act, conferred upon the former Commission of said City by statutes in effect at the time of the adoption of the Mayor-Council form of government.

No provision of Act No. 452, supra, is in conflict with the method provided by Act No. 457, supra, for the appointment of recorders of the City of Birmingham.

Therefore, I am of the opinion that the City Council of the City of Birmingham is authorized to appoint the recorders of said City, in the

manner and with the advice prescribed by that portion of Section 1 of Act No. 457, supra, quoted herein.

Since you have withdrawn your request of June 11, 1963, for an opinion of this office, I am withdrawing the opinion drafted under date of June 21, 1963, in response to said request.

Very truly yours,

RICHMOND M. FLOWERS
Attorney General

July 23, 1963

Honorable Robert L. Donan
Clerk, Montgomery County Court
County Court House
142 Washington Avenue
Montgomery 4, Alabama

Costs and Fees — Clerks of Inferior Courts — Paternity Cases.

1. No costs are charged in paternity cases in courts of original jurisdiction.

2. No Solicitor's fee charged in paternity cases.

3. No appeal bond required where either party in a paternity case appeals to the Circuit Court.

Opinion by Assistant Attorney General Bridges.

Dear Mr. Donan:

Your request for an official opinion bearing date of April 8, 1963, is as follows:

"As Clerk of the Montgomery County Court, Montgomery, Alabama, I am in need of guidance in the form of an official opinion from your office in the following matters concerning Title 27, Sections 12 (2), 12 (3) and 12 (6), which were added to the 1940 Code of Alabama by Act 295, Special Session, approved September 15, 1961:

"1. In instances wherein the defendant in a cause described in Title 27, Section 12 (2) is found guilty, should the court costs be charged, and if so, should the costs be those normally charged in criminal procedures?

"2. In the event of a trial and a subsequent finding of 'guilty' where the services of a solicitor are utilized (Title 27, Section 12 (3), should a solicitor's fee of $10 be taxed against the defendant? "3. Should a criminal or civil appeal bond be used by the defendant where an appeal is made to the circuit court (Title 27, Section 12 (6))? Additionally, in view of the provisions of Title 6, Section 3 (now repealed), I would appreciate your recommendation as to the amount of bond that should be required."

Act No. 295, General and Local Acts of Alabama 1961, Special Session, page 2353 [Title 27, Section 12(1)-(9), 1961 Pocket Supplement to Code of Alabama 1940, Recompiled 1958] establishes a statutory procedure for the determination of paternity of illegitimate children and repeals in toto Title 6, Code of Alabama 1940. Title 6, supra, contained the entire laws of this State relating to bastardy.

It is my opinion that no court costs should be taxed against either party in the court of original jurisdiction in a cause under the provisions of Act No. 295, supra; that a Solicitor's fee should not be charged in such case and that no appeal bond should be required of the appellant in such cause where an appeal is taken from the court of original jurisdiction to the Circuit Court.

A proceeding under Act No. 295, supra, is initiated by the filing of a complaint and the issuance of a warrant of arrest, but the only judgment which may be rendered by the court after a defendant is found "guilty" is a decree adjudging a defendant to be the father of the child involved; requiring him to pay a sum of money periodically for the support of said child and to pay for the reasonable expense of the mother's pregnancy and confinement. Act No. 295, supra, does not provide for the imprisonment of the defendant if he is found "guilty."

There appears to be no logical method to arrive at a decision that paternity cases brought under the provisions of Act No. 295, supra, are either civil or criminal actions. It is my opinion that these proceedings, being creatures of the statute, are neither civil nor criminal.

Costs are not awarded by the common law. They depend entirely upon statutory provisions and where no authority is given by the statute, there can be no taxation. See **Booth v. McQueen,** 1 Douglas 41, a Michigan case, and other cases cited in 10 C. J. S., p. 210, Note 59. No costs and fees in any case may be taxed unless expressly authorized by law. Title 11, Sections 1 and 79, Code of Alabama 1940, Recompiled 1958. Act No. 295, supra, is completely silent with reference to costs in courts of original jurisdiction.

It is my conclusion that no costs are to be taxed against either party in a proceeding under the provisions of Act No. 295, supra, in courts of original jurisdiction.

No provision is made in Act No. 295, supra, for a Solicitor's fee for services performed in a proceeding to determine the paternity of a child and I am not aware of any other statute which authorizes a Solicitor's fee in such cases. A fee of $50.00 is authorized for the Solicitor's services in connection with a prosecution for bastardy. Title 11, Section 85, Code of Alabama 1940, Recompiled 1958. Act No. 295, supra, repeals in toto the bastardy laws of this State and thereby abolishes such prosecutions and the Solicitor's fee for such prosecutions. The informal opinion rendered by this office to Honorable Howard Kirby, Clerk of the Circuit Court of Etowah County, Gadsden, Alabama, on November 28, 1962, is hereby expressly overruled insofar as it conflicts with this opinion.

Section 6 of Act No. 295, supra, grants to either party in a paternity case the right to appeal from a judgment of the court of original jurisdiction to the appropriate circuit court and sets forth the correct procedure for such an appeal. Section 6, supra, is completely silent about an appeal bond. Section 7 of Act No. 295, supra, authorizes an appeal from the Circuit Court to the Court of Appeals or the Supreme Court and requires a defendant to give security for costs of the appeal where the defendant is the appellant; however, if the defendant makes affidavit filed with the clerk of the circuit court that he is unable, after diligent effort, to make the appeal bond, he may appeal without any bond. It is noted that the appeal bond for which provision is made in Section 7, supra, does not secure the payment of a money judgment in the event the case is affirmed.

The omission of any provision for a bond where the judgment of the court of original jurisdiction is appealed to the circuit court, considered with the specific requirement for such bond where an appeal is prosecuted from a circuit court to an appellate court, leads me to the conclusion that the Legislature did not intend that an appeal bond be required as a condition to an appeal from the court of original jurisdiction to the circuit court. The maxim "expressio unius est exclusio alterius" (inclusion of one item excludes others of the same class) is a well recognized rule of statutory construction cited and used by the Supreme Court of Alabama many times. **Weill v. State ex rel. Gaillard,** 250 Ala. 328, 34 So. 2d 132; **City of Birmingham v. Brown,** 241 Ala. 203, 2 So. 2d 305; **State v. Lamson & Sessions Company,** 269 Ala. 610, 114 So. 2d 893.

Very truly yours,

RICHMOND M. FLOWERS
Attorney General

July 24, 1963

Honorable Ralph L. Jones, Attorney
Monroe County Commission
Monroeville, Alabama

Counties — Courthouses — Insurance

Under the provisions of Title 12, Section 12(23), Code of Alabama 1940, as amended by Act No. 45, Acts of Alabama 1961, page 1898, a county is authorized to take out a liability insurance policy on an elevator and air conditioning machinery in a new courthouse, and pay the premium therefor.

Opinion by Assistant Attorney General Screws.

Dear Sir:

Your request for an official opinion bearing date of July 16, 1963 provides as follows:

"Monroe County has an elevator and air-conditioning machinery in its new courthouse which possibly could injure persons using or coming into contact therewith. Can the County Commission take out a liability insurance policy on this machinery, with a limited medical benefit included, to protect any person or persons who might be injured thereby, and pay the premium therefor?"

I am of the opinion that both parts of your inquiry should be answered in the affirmative.

Title 12, Section 12, Code of Alabama 1940, which deals with the general authority of a county governing body, was last amended by Act No. 45, approved September 15, 1961, Acts of Alabama 1961, page 1898 (Title 12, Section 12, Code of Alabama Recompiled 1958, 1961 Cumulative Pocket Part). Title 12 of Section 12, supra, as last amended, provides in pertinent part as follows:

"Section 1. Section 12, Title 12, Code of Alabama 1940, as amended, is amended further to read as follows:

"'Section 12. The court has authority:

* * *

"'23. **To insure in solvent companies** the courthouse, jail, machine shops and other buildings of the county against loss of fire and storm, and the trucks, tractors, machines, shovels, graders, equip-

ment, vehicles and other personal property of the county against loss by fire and theft and **against liability for damages to persons and property.** Payment of premium on such insurance coverage shall be made from the general fund of the county, except that payments of premiums on insurance coverage on vehicles, items of equipment or other personal property used and employed exclusively in connection with the establishment, construction, repair and maintenance of the public roads and bridges of the county may be made from the gasoline funds of the county, and payments of premiums on insurance coverage on the courthouse, jail, machine shops and other buildings of the county may be made from the proceeds of special taxes levied for erection, repairing, furnishing or maintenance of public buildings, bridges or roads. Payments heretofore made for these purposes are validated' " (Emphasis supplied).

* * *

The emphasized portion of the above quoted subsection 23, in my opinion, is sufficiently broad to authorize your county to take out the type of liability insurance policy as set forth in your letter of inquiry. The premium therefor is payable under the provisions of the latter part of said subsection.—Quarterly Report of Attorney General, Volume 39, page 15; Quarterly Report of Attorney General, Volume 8, page 197.

Yours very truly,

RICHMOND M. FLOWERS
Attorney General

July 26, 1963

Honorable John A. Sankey
Judge of Probate
Montgomery County Courthouse
Montgomery, Alabama

Notaries Public — Bonds — Judges of Probate.

The faithful performance bonds of notaries public, appointed under the provisions of Acts Nos. 150 and 151, approved July 9, 1963 (MS), are made payable to the State of Alabama.

Opinion by Assistant Attorney General Screws.

Dear Sir:

Your request for an official opinion bearing date of July 22, 1963 presents the following:

"Act No. 150, H.B. 263, approved July 19, 1963, amended Title 40, Section 1, Code of Alabama 1940, to provide for the appointment of commercial notaries public in each county of the State by the judges of probate of the several counties of the State.

"Act No. 151, H.B. 265, amended Section 1 of Act No. 431, S. 155, Acts of Alabama 1943, page 400, to provide for the appointment of notaries public for the State at Large by the Judges of Probate of the several counties of the State.

"The provisions of law regarding the faithful performance bonds of the two types of notaries public in question remain unchanged. "Should the said bonds be in favor of the State of Alabama, the county in which the appointment is made, or in favor of the Judge of Probate making the appointment?"

In answer to your inquiry, it is my opinion that the faithful performance bonds of both types of notaries public under consideration should be made payable to the State of Alabama.

Title 40, Code of Alabama Recompiled 1958, relates to notaries public.

Chapter 1 [Sections 1-14(1)] of said title, covers commercial notaries public for each county in the State. Under Section 1, the appointment was made by the Governor. This Section was amended by Act No. 150, supra, and provided for the appointment by the Judges of Probate of the several counties of the State. The bond provision under Section 4, making the bond payable to the State of Alabama, remained unchanged.

Chapter 3 (Section 21-23) of said title covers the appointment of notaries public for the State at Large. These three sections were brought forward from Act No. 431, S. 155, Acts of Alabama 1943, page 400. Section 21 (Section 1 of Act No. 431, supra) provided for the appointment of notaries public for the State at Large by the Governor. Act No. 151, supra, amended said Section 1 and provided for the appointment by the Judges of Probate of the several counties of the State. Section 22 (Section 2 of Act No. 431, supra), making the bond payable to the State of Alabama, remained unchanged.

Although the official making appointment of each type of notaries public was changed from the Governor to the Judges of Probate of

the several counties of the State, the provisions regarding the bonds of each, made payable to the State of Alabama, remained unchanged and are in full force and effect.

In view of the above, it follows that the faithful performance bonds of each type of notaries public under consideration, which are now appointed by the Judges of Probate of the several counties of the State, are made payable to the State of Alabama.

Yours very truly,

RICHMOND M. FLOWERS
Attorney General

August 1, 1963

Honorable J. M. Sandlin, Jr.
Mayor, Town of Moulton
Moulton, Alabama

Municipalities — Officers and Offices — Residence.

1. A recorder of one municipality may not serve as a recorder of another municipality.

2. The recorder of the Town of Moulton may reside outside said Town and outside Lawrence County.

Opinion by Assistant Attorney General Gish.

Dear Sir:

Your request for an official opinion, under date of July 16, 1963, is as follows:

"I would like to get an opinion on the following:

"If it is permissible for a City Recorder living in another county and serving as City Recorder in a town of that County to serve as City Recorder in a town in an adjoining County."

Reference is also made to your telegram of July 24, 1963, which reads as follows:

"In addition to the ruling requested in our recent letter your

guidance is likewise requested as to whether or not there is a requirement for a city recorder to be a resident of the county or municipality wherein he presides."

In an opinion reported in Quarterly Report of Attorney General, Vol. 61, page 40, this office held that a municipal recorder holds an office of profit within the meaning of the Constitution of Alabama 1901, Section 280, which prohibits, with certain named exceptions, the holding of two such offices at one and the same time. See also Title 41, Section 5, Subsection 7, Code of Alabama 1940.

Therefore, I am of the opinion that a person who holds the office of recorder of a municipality may not, at one and the same time, serve as recorder of another municipality.

I have found no statute and I know of no ordinance, applicable to the Town of Moulton, which requires that its recorder reside either within said Town or within Lawrence County. Title 37, Section 406, Code of Alabama 1940.

Therefore, I am of the opinion that the recorder of the Town of Moulton may reside outside said Town and outside Lawrence County.

Very truly yours,

RICHMOND M. FLOWERS
Attorney General

August 1, 1963

Honorable William H. Tuck
Mayor, City of Eutaw
Eutaw, Alabama

Licenses — Municipalities — Taxes.

1. A municipal privilege license tax on merchants may be based upon gross receipts from sales made both within and outside the corporate limits of the municipality.

2. Sales made to the owners of a business are included when computing the gross receipts of such business for municipal privilege license tax purposes.

Opinion by Assistant Attorney General Gish.

Dear Sir:

Your request for an official opinion, under date of July 17, 1963, is as follows:

> "One of the merchants in Eutaw does business within the City of Eutaw and also outside the City of Eutaw and in adjoining counties. This merchant contends that he is not liable for the City of Eutaw privilege license based on that part of its business outside the city limits of Eutaw. Enclosed herewith is a copy of the current license schedule and it is our request that you give us an opinion as to whether a merchant doing business in the City of Eutaw is liable for a license based on the entire gross receipts of the business both within the City of Eutaw and outside the City of Eutaw.
>
> "Also please advise whether a firm is liable for license based on that portion of the income of the business derived from the sale of merchandise to members of the partnership or corporation."

The license ordinance of the City of Eutaw, adopted December 12, 1961, imposes a privilege license upon persons, firms and corporations engaged in merchandising or carrying on any business of a mercantile character. The amount of said tax is based upon gross receipts derived from such business. Said ordinance makes no distinction between sales made within the corporate limits of said City and those made outside such corporate limits.

Title 37, Section 735, Code of Alabama 1940, authorizes a municipality to levy a privilege license tax upon businesses, basing the amount of the tax upon gross receipts from sales made both within and outside its corporate limits. **Ingalls Iron Works Company v. City of Birmingham,** 248 Ala. 417, 27 So. 2d 788. See also **Gotlieb et al v. City of Birmingham,** 243 Ala. 579, 11 So. 2d 363, and cases there cited.

There is no rule of law which exempts from computation for tax purposes, under an ordinance such as the one here considered, the gross receipts derived from the sale of merchandise to the owners of a business.

Therefore, I am of the opinion that the license ordinance of the City of Eutaw imposes upon the merchants of said City privilege license taxes, the amount of which is based upon the entire gross receipts of their businesses, including sales made both within and outside the corporate limits of the City and including sales made to the owners

of such businesses.

Very truly yours,

RICHMOND M. FLOWERS
Attorney General

August 7, 1963

Honorable J. C. Webb
Chairman, Perry County Hospital Board
Marion, Alabama

Appropriations — Hospitals — Municipalities.

A county hospital board may appropriate funds to help construct a municipal sewer system which will serve the county hospital and nursing home.

Opinion by Assistant Attorney General Gish.

Dear Sir:

Your request for an official opinion, under date of July 19, 1963, reads as follows:

"You are respectfully requested for an opinion: Can Perry County Hospital Board funds be used to assist in the construction of sewer lines and lagoon for disposal of sewage for Perry County Hospital and Perry County Nursing Home located in Marion, Alabama?

" 'The Perry County Hospital Board is a legally constituted public agency of Perry County having been incorporated pursuant to the provisions of Act No. 46, General Acts 1949, page 68.'

"The City will actually construct this sewage system and lagoon to serve among other customers the Perry County Hospital and Perry County Nursing Home at a total cost to the City of Marion of approximately $110,000.00.

"When the original Perry County Hospital was constructed in 1949, a sewage septic tank was constructed which cost approximately $18,000.00. We have had heavy maintenance cost on this septic tank.

"Due to the enlargement of the hospital several years ago, a second septic tank was built which resulted in additional large maintenance cost.

"We now have the Perry County Nursing Home under construction adjoining the Perry County Hospital. This is owned and operated by the Perry County Hospital Board in conjunction with Perry County Hospital.

"The present two septic tanks will not take care of the Perry County Nursing Home.

"There is no land available to construct another septic tank system on our present property. Possibly additional land could be purchased but only at an extremely high expenditure.

"If this land could be purchased, then in addition to the cost of the land it is estimated that it would cost approximately $10,000.00 to put in an adequate system for Perry County Nursing Home.

"An opinion is respectfully requested: Would it be legal for the Perry County Hospital Board instead of constructing an additional septic tank at a cost of approximately $10,000.00 to participate with the City of Marion in the building of a lagoon by an appropriation of $10,000.00 to the City of Marion, Alabama?

"We feel that we are purchasing $10,000.00 worth of sewer services. "This lagoon would enable us to connect the Perry County Hospital sewage system and eliminate the use of the two present septic tanks which require constant maintenance. We also would not have to construct the third septic tank system for Perry County Nursing Home. Also, on future additions we would not have to construct additional septic tanks. In addition it would make available to Perry County Board land for further additions to the present Hospital and Nursing Home.

"Actually there will be less money spent than if we purchase additional land and build a septic tank for the Nursing Home."

As your request points out, the Perry County Hospital Board was created under and is controlled by the provisions of Act No. 46, General Acts 1949, page 68.

Section 1 of Act No. 46, supra, expresses a legislative intent that each county of this State be authorized to organize a county hospital board for the purpose of acquiring, owning and operating public hospitals and other public health facilities and further provides in part as follows:

". . . It is the legislative intent to confer on corporations organized hereunder all the powers requisite for the fulfillment of the purposes of their organization, including the power to do whatever financing may be necessary to accomplish such purposes. This act shall be liberally construed to give effect to its purpose . . ." Section 7 of said Statute reads in part as follows:

". . . The corporation shall have the following powers, together with all powers incidental thereto or necessary to the discharge thereof in corporate form; . . . to acquire, construct, equip, enlarge, improve, maintain, and operate a hospital, and to do all things necessary to that end; . . . "

The opinion reported in Quarterly Report of Attorney General, Vol. 60, page 32, held that an appropriation may be made from proceeds derived from a special county hospital tax, to enable a municipality to extend a sewer line to a county hospital.

This office held in an opinion reported in Quarterly Report of Attorney General, Vol. 18, page 196, that the Board of Trustees of Alabama College had authority to contribute to the cost of a municipal storm sewage project which would drain college property.

We have also held that a county board of education may contribute to the cost of a municipal sewage project to the extent of the value of such project to public school property. Quarterly Report of Attorney General, Vol. 14, page 19.

Based upon that portion of Act No. 46, supra, quoted herein, upon the authorities cited, and upon the absolute necessity of securing an adequate sewere system to serve the Perry County Hospital and the Perry County Nursing Home, I am of the opinion that the Perry County Hospital Board may make the proposed appropriation, to which your request refers, to the City of Marion.

It is suggested that the Perry County Hospital Board and the City of Marion enter into a contract under which said Board agrees to make the proposed appropriation in consideration for an agreement by said City granting the free use of the municipal sewer system to the facilities operated by the Board perpetually or for a stated number of years.

Very truly yours,

RICHMOND M. FLOWERS
Attorney General

August 8, 1963

Honorable Bradley Brown
Director, Department of Revenue
Of Jefferson County
117 Court House
Birmingham 3, Alabama

Motor Vehicle Licenses — "For-Hire" Trucks — Former Opinion Extended

1. Under the terms of the proviso contained in Title 51, Section 697, Code of Alabama 1940, Recompiled 1958, it is not necessary that a truck be purchased "new" after November 15 of the license tax year for the owner of the truck (whether it be a "for-hire" truck or not) to be eligible to purchase a license tag therefor on the monthly declining basis.

2. Where a "for-hire" truck as is contemplated by Act No. 672 of the 1961 Session of the Alabama Legislature (Acts 1961, Vol. I, page 921,) was purchased after November 15 of the license tax year, and is brought into the State from another state during said year, the owner of such truck would under the proviso contained in Section 697, supra, be eligible to purchase a "for-hire" tag for such truck on the monthly declining basis based on the month after November 15 that it was brought into Alabama and used on the highways of this State.

3. Where a truck purchased after November 15 of the license tax year is converted from a regular truck to a "for-hire" truck as contemplated by Act No. 672, supra, during the same year, the owner of such truck would be eligible under the proviso in Section 697, supra, to purchase a for-hire tag for such vehicle on the monthly declining basis starting with the month in which the truck is first run on the highways as a for-hire truck.

4. The opinion of this office to Honorable Phillip J. Hamm, Commissioner, Revenue Department, dated June 17, 1963, and relating to the licensing of for-hire trucks is hereby extended accordingly.

Opinion by Assistant Attorney General Burton.

Dear Sir:

Your request for an official opinion bearing date of July 23, 1963, is as follows:

"The writer has just read your opinion of June 17, 1963, to Honorable Phillip J. Hamm, Commissioner, Revenue Department, relative to the licensing of For-Hire vehicles, and request some clarifications of same.

"On page No. 6, second paragraph, you stated that trucks must have been purchased **new** after November 15, of the tax year in order for the monthly declining basis to apply. Did you intend or mean to use the world 'new' in this sentence? Nowhere else in your opinion nor in Section 697, can we find the word 'new.'

"Where a truck is brought into the State of Alabama from without the state and enters into for-hire service, does the monthly declining basis begin the month in which the truck enters into for-hire service in Alabama or the month in which the truck was purchased?

"An Alabama truck used in not for-hire service and later in the tax year is converted to for-hire service, what month should be used as the beginning of the proration for the monthly declining basis, the month in which it was purchased or the month it was converted to for-hire service?"

Your first question is answered to the effect that the word "new" as used in my opinion to the Honorable Phillip J. Hamm, Commissioner, Revenue Department, dated June 17, 1963, and relating to the licensing of for-hire trucks was inadvertently used by me as I give the word no significance in interpretating Title 51, Section 697, Code of Alabama 1940, Recompiled 1958.

The proviso in Section 697, supra, and to which your question relates is in pertinent part, as follows:

"**Provided, however, except for trucks purchased prior to November fifteenth of any tax year** that the licenses called for shall be purchased on a monthly declining basis . . ." (Emphasis supplied)

While this proviso in other respects might not be said to be exactly clear, in this particular regard it is clear that it is to apply to all trucks purchased after November 15 of the tax year, regardless of the condition of the trucks. **State v. Bay Towing & Dredging Company,** 264 Ala. 187, 85 So.2d 890, 892. **State v. Thames, Jackson, Harris Co.,** 259 Ala. 471, 66 So. 2d 733, 735, etc.

Had the legislature intended the proviso to apply only to "new"

trucks, or trucks purchased "new" after November fifteenth, it could have easily inserted the word "new" into this part of the proviso. The fact that the legislature did not do this then plainly shows that it did not intend to limit the effect of the proviso in this respect or for it to apply only to trucks purchased "new." **State v. Bay Towing & Dredging Co.**, supra, 85 So.2d at 892, and **State v. Thames, Jackson, Harris Co.**, supra, 66 So.2d at 735.

Your second question is answered to the effect that the monthly declining basis as provided in Section 697, supra, where the truck is purchased after November 15, would begin the month when the truck is first brought into the State and used on the highways of this State as a for-hire truck.

As discussed in some detail in my opinion to the Honorable Phillip J. Hamm, dated June 17, 1963, the primary purpose of the motor vehicle license tax laws is to levy these taxes for the privilege of using the highways of this State and as a contribution for the maintenance and upkeep of the highways. Such license taxes then relate directly to the use of the motor vehicle involved on the state highways. The month that the truck is brought into the State and is used on the State highways as a for-hire truck is the month then to be used for the starting point in computing the tax on the monthly declining basis. While it is true that Section 697, supra, requires that the truck be purchased after November 15 of the license tax year involved for its owner to be eligible to purchase a tag on the monthly declining basis, it is the month that the truck is actually brought into the State and used on the highways of this State that is to be used as a starting point in ascertaining the amount of tax due where computed on the monthly declining basis.

In using the phrase "except trucks purchased prior to November fifteenth of any tax year . . ." in providing for the monthly declining basis, in Section 697, supra, it is my opinion that the legislature actually had in mind the use of such trucks on the highways during the period at the beginning of the tax year commencing on October 1 and ending on November 15, and before the license becomes delinquent on November 16. This is true because a truck purchased prior to November 16, would normally be used on the State highways during said period and after the beginning of the license tax year on October 1. The legislature in this respect seems to have clearly intended by this proviso then that the owner of a truck who uses it on the highways of this State after the commencement of the license tax year on October 1 and before the delinquent date on November 16, not be eligible to purchase a license for same on the monthly declining basis regardless of what the other circumstances might be. In considering the over-all intent and purposes of the motor vehicle license tax laws this seems a very logical and feasible interpretation of this proviso, and the only one that serves any useful purpose as a matter of practical

application. And although the proviso does not exactly say this in so many words, its meaning from what would give it a practical field of operation in relationship to the other motor vehicle license tax laws is also to be considered and given weight in ascertaining the real legislative intent. **Town of Graysville v. Johnson,** 33 Ala. App. 479, 34 So. 2d 708, **Worthen v. State,** 189 Ala. 395, 66 So. 686, **Thompson v. State,** 20 Ala. 54, etc. Also Quarterly Report of the Attorney General, Vol. 24, page 146, etc.

This would be especially applicable to trucks brought into the State as your question is so directed. The principle, however, would be just as applicable to trucks purchased after November 15 of the tax year in Alabama, for the month to be used as the starting point for computing the tax on such trucks on the monthly declining basis would also be the month in which the truck is first used on the highways of this State.

In answer to your third question, I wish to state that the month to be used as the starting point for computing the tax on the monthly declining basis in such cases, and where the truck was purchased after November 15, would be the month in which the converted truck was first used on the highways of this State as a "for-hire" truck.

The reasons for this are the same as those which are given in answering your second question.

Yours very truly,

RICHMOND M. FLOWERS
Attorney General

August 9, 1963

Honorable George A. Toulmin
License Commissioner
P. O. Box 91
Mobile, Alabama

Ad Valorem Taxes — Motor Vehicles — Demonstrators

1. "Demonstrators" which are a part of an Alabama motor vehicle dealer's stock and which have never been licensed for regular highway use, when sold by the dealer, fall into the category of "new motor vehicles for which licenses have never been issued, sold from the stock of a dealer,"

for the purpose of computing the ad valorem tax under Title 51, Section 704, as amended, Code of Alabama 1940, Recompiled 1958, on a quarterly basis.

2. The ad valorem tax on such vehicles is to be computed under Section 704, as amended, supra, on the basis of the quarter during the tax year in which the dealer sells the "demonstrators."

Opinion by Assistant Attorney General Burton.

Dear Sir:

Your request for an official opinion bearing date of July 29, 1963, is as follows:

"Your official opinion is hereby respectfully requested in relation to the following matter.

"1. Into what category shall motor vehicles used for demonstration purposes be placed under the circumstances hereinafter related. That is, shall they be designated "used motor vehicles" or "new motor vehicles". Regarding this request, you are respectfully referred to Act No. 660 of the 1961 Session of the Alabama Legislature, approved September 6, 1961, and to that Opinion of the

Attorney General rendered August 31, 1962 (Vol. 108, Page 7).
"For example, a motor vehicle dealer placed a new motor vehicle in his stock on October 6th, 1962. From that date, such vehicle was used for demonstration purposes and was operated on the highways of Alabama, bearing a valid Alabama dealer's tag.

"On July 10, 1963, the dealer sold such motor vehicle and furnished the purchaser a bill of sale denoting that it was a 'used' motor vehicle, having been used as a demonstrator automobile and stipulating, in such bill of sale, the number of miles it had been operated on the highways of Alabama. The purchaser was issued a 1963 motor vehicle tag with the registration form showing the date the car was purchased from the dealer and the date the dealer brought the car into his stock of goods.

"2. When the purchaser applies for his 1964 license and tag, shall ad valorem taxes be assessed for a full year, counting from the date the car was brought into the dealer's stock, or shall such ad valorem taxes be assessed for one-fourth of a year, using the date of the bill of sale; thus exempting said vehicle from ad valorem taxation for the first three-quarters of the preceding tax year because of the fact that it had never previously been licensed?

"Because our staff is now assessing motor vehicles for 1964 licensing, an early official opinion clarifying the status of such motor vehicle 'demonstrators' will, indeed, be very much appreciated. And we thank you very much for your usual cooperation and help."

While I fully recognize the fact that the license taxes levied as to motor vehicles under Title 51, Chapter 20, Article 8, Code of Alabama 1940, Recompiled 1958, are distinct levies from the ad valorem taxes on motor vehicles which are contemplated under Title 51, Section 704, as amended, Code of Alabama 1940, Recompiled 1958, the two do have some affinity and often have to be considered together in arriving at a proper interpretation of Section 704, as amended, supra, both from the standpoint of collecting ad valorem taxes and license taxes on such vehicles.

This seems particularly important in considering what might be the proper answers to your questions, as under Title 51, Section 464, Code of Alabama 1940, Recompiled 1958, and in the case of the special dealer's permit, a demonstrator used by a dealer is actually treated as a part of his stock and inventories for the purpose of issuing this special permit, along with the other motor vehicles in the dealer's stock of goods. Moreover, the special dealer's tag or permit for which only a dollar is charged to cover the expense of making and issuing same is not a regular license tag nor is the one dollar fee charged therefor a license tax. See official opinion (M.S.) to Mr. Alton D. Miller, Director, Madison County Motor Vehicle License Department, Huntsville, Alabama, dated May 29, 1963.

Under Title 51, Section 704(c), Code of Alabama 1940, as amended by Act No. 660 of the 1961 Session (Acts 1961, Vol. I, page 822), the assessment of ad valorem taxes on motor vehicles on a quarterly basis is said to apply to the following vehicles:

"Motor vehicles brought into the state during any tax year, or new motor vehicles **for which licenses have never been issued, sold from the stock of a dealer during any year...**"
(Emphasis supplied)

In addition to the foregoing, subsection(e) of Section 704, as amended in 1961 by Act No. 660, supra, provides as follows:

"'(e) After the thirtieth day of September, 1961, motor vehicles shall not be included in any assessment made by any person, firm or corporation under the provisions of section 21 (d) of this title as of the first day of October, 1961, or any subsequent year, **and such motor vehicles shall not be considered an escape property by reason of the failure to include the same in any tax return**

as of the first day of October, 1961, or any subsequent year; all motor vehicles shall be assessed and the taxes thereon shall be collected solely as herein provided.'"

This subsection then of Section 704, as amended in 1961, supra, has the effect from the standpoint of coverage of excluding entirely from the ad valorem tax on motor vehicles the tax on such vehicles as inventories or otherwise while, and during the time, such vehicles are a part of an automobile dealer's stock of goods.

Thus, demonstrators, and particularly as they are specifically named in Section 464, as amended, supra, for the purpose of the special dealer's permit, appear to be considered by the legislature as a part of the motor vehicle dealer's stock of goods. **Moreover, this one dollar tag or special permit cannot be considered as a license tag or the payment of the license tax as the one dollar fee charged therefor is hardly sufficient to reimburse the State Department of Revenue for the expense of making the tag and issuing same.** It is merely a permit or special tag for the dealer to use on a motor vehicle for the purpose of "displaying, **demonstrating** and testing" it and for "such other uses incident to conducting a general automobile agency". See Title 51, Section 464, as amended, supra.

The foregoing being considered, "demonstrators" which are a part of an Alabama motor vehicle dealer's stock and which have never been licensed for regular highway use, and for which only the special permit under Section 464 has been issued, would under Section 704(e), as amended, supra, fall into the category, when sold by the dealer, of "new motor vehicles for which licenses have never been issued, sold from the stock of a dealer" during the tax year, for the purpose of paying the ad valorem tax on a quarterly basis under said Section. The tax under such circumstances would on October 1 at the end of the tax year involved, be payable on the basis of the quarter during the year in which the demonstrators are sold by the dealer.

Your questions are answered accordingly.

Very truly yours,

RICHMOND M. FLOWERS
Attorney General

August 14, 1963

Honorable John Graves
State Comptroller
State of Alabama
Montgomery, Alabama

Cost and Fees — Expenses — Extradition — Pardon & Parole and Probation — Sheriffs — Opinions overruled, modified and distinguished.

1. For returning a prisoner in an extradition case, the sheriff shall receive eight dollars per day allowance and actual necessary expenses, including expenses of transportation.

2. For returning probationer or parolee under interstate compact, the sheriff shall receive the same expenses and allowances as if for extradition.

3. Quarterly Report of Attorney General, Volume 94, page 53, modified to conform with this opinion.

Opinion by Assistant Attorney General Webb.

Dear Mr. Graves:

I have received your letter of August 7, 1963 in which you request my opinion as follows:

"With reference to your opinion dated July 16, 1963 to Honorable Phillip Willingham, Chairman, Board of Commissioners, Sumter County, with relation to allowances provided the sheriff and his guard, under the provisions of Title 11, Section 100, for removal of prisoners, I request your official opinion as to whether or not the opinion under date of July 16, supra, affects a sheriff receiving eight dollars ($8.00), plus his actual expenses, including transportation expenses, on cases of extradition and returning out-of-state probationers and parolees."

The portion of the opinion to Honorable Phillip Willingham, Chairman, Board of Commissioners, Sumter County, dated July 16, 1963, referred to by you, reads as follows:

"The eight dollars allowed to the sheriff and the guard have been treated by this office as being an allowance in the nature of a per diem. See Opinion of the Attorney General to Honorable W. A Bratton, Sheriff, Sumter County, under date of May 31, 1963. You will note that under the provisions of Title 11, Section 100, the Sheriff receives mileage in the event that he travels in his private automobile or he receives travel expense in the event that some other type of conveyance is used The per diem allowance of eight dollars for the Sheriff and for the guard takes the place of any other expense or items of expense incurred by the Sheriff and his

Deputy, such as food and lodging. The allowance is, thus, a reimbursement on a flat basis and does not constitute a fee or salary for services rendered."

The basis of this ruling referred to is the wording of Title 11, Section 100, Code of Alabama Recompiled 1958. In this section, the Legislature specifically authorized an eight-dollar allowance and travel expense. No other expense, in my opinion, is authorized under that section. However, extradition cases are handled under an entirely different section. In this regard, your attention is invited to the provisions of Title 15, Section 72, Code of Alabama Recompiled 1958, which reads, in pertinent part, as follows:

"The sheriff . . . shall receive eight dollars per day while going to and returning from the place where the prisoner is arrested or confined, **and actual necessary expenses,** including expenses or transportation . . ." (Emphasis supplied.)

I am of the opinion that the eight dollars allowed under Title 15, Section 72, while being an expense allowance, is obviously intended by the Legislature to be an additional amount besides those actual necessary expenses which may be claimed on an expense voucher submitted to the state or to the county for payment and that the sheriff is, therefore, entitled to his eight dollars allowance, his actual necessary expenses, and his transportation expenses, or ten cents a mile, in lieu of transportation expenses in the event that a private automobile is used.

With regard to return of probationers and parolees under the interstate compact (Chapter 2 of Title 42, Code of Alabama Recompiled 1958), this office has previously ruled (Quarterly Report of Attorney General, Volume 94, page 53) that the expenses of the sheriff for arresting and returning such a prisoner, if not previously imposed upon the prisoner by the court as condition precedent, are payable in the same manner as if the prisoner were to be arrested within the State of Alabama, the inference being that such expenses would be paid under the provisions of Title 11, Section 100, supra, insofar as this opinion is concerned the same is hereby overruled and modified. It is my opinion that the Sheriff when returning a probationer or parolee under the interstate compact should be paid the same expenses as if the prisoner were being extradited. See Title 42, Section 27, Code of Alabama Recompiled 1958 and Title 15, Section 75, Code of Alabama Recompiled 1958.

Very truly yours,

RICHMOND M. FLOWERS

Attorney General

August 19, 1963

Honorable Howard Kirby
Circuit Clerk
Circuit Court
Etowah County
Gadsden, Alabama

Costs and Fees — Etowah County — Inferior Courts — Statutes.

Cases transferred from Circuit Court to Etowah County Court under provisions of Act No. 91, Acts of Alabama 1963, Regular Session, may carry costs accrued in Circuit Court upon Circuit Court making order of transfer.

Opinion by Assistant Attorney General Webb.

Dear Mr. Kirby:

I have received your request for an opinion under date of August 8, 1963, which reads as follows:

"Please refer to Act No. 91, House Bill 233, of the 1963 Regular Session of the Legislature of Alabama, approved by the Governor on June 27th, 1963, and render to me your opinion on the following matter.

"In view of the fact that Section 10 of the above stated Act provides that any Civil case within the jurisdiction of the Etowah County Court pending in the Circuit Court may, at the request of either party thereto, be transferred to the Etowah County Court, wouldn't I as clerk of Circuit Court be required to certify to the Etowah County Court the amount of costs accrued in Circuit Court at time of transfer, and shouldn't the costs so certified from Circuit Court be taxed in County Court cases along with the costs accruing in County Court?"

I note that Etowah County Court was created under the provisions of Act No. 91, Acts of Alabama 1963, Regular Session. Under the provisions of Section 10, Act No. 91, supra, any cases within the jurisdiction of the court established pending in the Circuit Court of Etowah County, County Court, Justices of the Peace Court, or a court created in lieu of justices of the peace, may, at the request of either party thereto, be transferred to the Etowah County Court as though initially instituted in this court. However, said section makes no pro-

vision requiring accrued costs in transferred cases to be assessed after the case has been disposed of in the Etowah County Court.

This office has previously held in numerous opinions that costs accrue and attach at the time the services are performed. See, for example, Quarterly Report of Attorney General, Volume 2, page 118, and Quarterly Report of Attorney General, Volume 17, page 94.

In view of the fact, however, that no provision of law in Act No. 91, supra, provides for accrued costs in transferred cases, it is my opinion that such costs, upon an order of transfer, should be certified by the Judge or Clerk of the Circuit Court to the newly created court. Such costs are then taxed in the new court as other costs. See Quarterly Report of Attorney General, Volume 50, page 61 65-66).

Very truly yours,

RICHMOND M. FLOWERS
Attorney General

August 20, 1963

Hon. Winston Stewart
Executive Director
Association of County Commissioners
of Alabama
513 Madison Avenue
Montgomery 4, Alabama

Public Safety — Drivers License — Probate Judge — Fees

1. The maximum amount to be charged for a drivers license under Title 36, Section 60, Code of Alabama 1940, as amended by Act No. 193, General Acts 1963, approved July 26, 1963, is $4.25.

2. The affidavit fee of $.25 allowed under Title 11, Section 29, Code of Alabama 1940, as Recompiled 1958, shall not be charged or collected by the Probate Judge or his Chief Clerk for taking or receiving an application for a drivers license or issuing drivers permits.

Opinion by Assistant Attorney General Bradley.

Dear Sir:

Your request for an official opinion, bearing date of August 5, 1963, is as follows:

"I request your official opinion as to whether or not a Judge of Probate on salary should collect an affidavit fee of .25c for affidavit taken by him or his chief clerk under Title 36, Section 60, Code of Alabama 1940 as amended in issuance of drivers license?"

As I understand your request for an opinion from this office, you are concerned with whether or not the Judge of Probate may charge a fee of twenty-five cents for taking the oath as required upon making application for the issuance of a driver license, as provided by Title 36, Sections 60 and 61, Code of Alabama 1940, as amended.

In an opinion of this office to the Honorable J. F. Brawner, Chief of the Drivers License Division, Department of Public Safety, dated September 22, 1939, found in Volume 16, Quarterly Report of the Attorney General, page 267, it was held that the Judge of Probate or his Chief Clerk could charge a fee of twenty-five cents for administering an oath as provided for in Title 11, Section 29, Code of Alabama 1940, as Recompiled 1958, for a person who was applying for a driver's license. However, this opinion was based on the 1939 Driver's License Law, which provided in pertinent part as follows:

"He shall also at said time deliver to the State Treasurer the amount of all such fees collected, less ten cents for each application received or permit issued, which sum shall be retained by him and shall be his sole compensation for performing any and **all duties required of him under the provisions of this act.**" (Emphasis supplied).

The Attorney General, in said opinion, stated:

"You will note that the proviso of the new Driver's License Law or Highway Patrol Act last hereinabove quoted, which sets the fee of the Judge of Probate under the provisions of the new act, states that the fee there provided 'shall be his sole compensation for performing any and all duties required of him **under the provisions of this act.**' (Emphasis supplied). I have already pointed out that the new act contains no authority or requirement for the Judge of Probate or his chief clerk to administer this affidavit which is required of applicants for driver's license, and that if the Judge of Probate or his chief clerk administer the same, they do so under the general laws investing them with authority to administer oaths or affidavits. It could not be said that when the Judge of Probate so acts he is performing a duty required of him under the provisions of the new Driver's License Law or Highway Patrol Act."

The present Driver's License Law, which is in question, (Title 36, Sections 60 and 61, Code of Alabama 1940, as amended by Act No. 193, General Acts 1963, approved July 26, 1963) was changed in 1951 to read in pertinent part as follows:

> "Two-fifths of each twenty-five cents retained by the Probate Judge shall be for his own use, and no other or further charge shall be made by him for services rendered in taking or receiving applications or issuing permits; . . ."

Title 36, Sections 60 and 61, supra, were amended to provide as above quoted, subsequent to the rendering of the opinion to Chief Brawner as set out in Volume 16, Quarterly Report of the Attorney General, page 267. Hence, I am of the opinion that the change in the law in question from "shall be his sole compensation for performing any and all duties required of him under the provisions of this act" to "two-fifths of each twenty-five cents retained by the Probate Judge shall be for his own use, and no other or further charge shall be made by him for services rendered in taking or receiving applications or issuing permits; . . ." was for the sole purpose of changing the effect of the above mentioned opinion of this office.

The Legislature desired the charge to the purchaser for a driver's license or permit to be limited to the amount provided in the Driver's License Law, (Title 36, Section 60, Code of Alabama 1940, as amended), e.g. $4.25 for a driver license, under the 1963 Act of the Legislature. (Act #193, General Acts 1963, approved July 26, 1963.)

Consequently, it is my opinion that the Probate Judge or his chief clerk, upon taking or receiving an application for a driver's license or driver's permit, can charge only $4.25 therefor, and cannot charge for any other service rendered in connection therewith, including the administration of the oath as a part of the application for the issuance of the driver's license.

Very truly yours,

RICHMOND M. FLOWERS
Attorney General

August 28, 1963

Honorable R. H. Vickery
Superintendent
Monroe County Schools
Monroeville, Alabama

Schools — County Superintendents of Education — Salaries — Officers

1. County superintendents of education appointed under the general law and whose compensation, including salary and expenses, is governed by the second sentence of Section 111, as amended, Title 52, Code of Alabama, 1940, cannot have either salary or expenses once fixed increased thereafter during the term for which appointed.

Opinion by Assistant Attorney General Madison.

Dear Sir:

Your request for an official opinion, bearing date of August 22, 1963, is as follows:

"1. Can County School Boards increase the salary of a Board appointed Superintendent during his designated term of office?
"2. Can school Boards increase the travel allotment to appointed Superintendents of Education during their designated term of office?"

In order to answer your request without further information from you, I must assume that you are speaking of appointed superintendents of education under the general law whose salary and expenses, one or both, are not fixed by law.

The second sentence of Section 111, Title 52, Code of Alabama 1940, as amended by Act No. 313, General Acts 1943, page 300, provides the following:

"In counties in which the maximum salary of the county superintendent of education is not fixed by law, the county superintendent of education **shall receive such compensation, including salary and travel expenses, as the county board of education shall direct.**" (Emphasis supplied.)

By letter dated January 16, 1957 to Honorable John R. Hargis, Principal, Prattville, Alabama, this office gave consideration to Act No. 383, Local Acts 1943, page 214, which provides in pertinent part as follows:

". . . That such County Superintendent of Education shall devote his entire time to the public school business of Autauga County and **shall receive such compensation, including salary and traveling expenses, as the county board of education shall direct . . .**" (Emphasis supplied.)

The pertinent wording of the said Local Act is practically the same as that in the second sentence of Section 111, supra. As to this Local Act, this office ruled that expenses are treated as part of the compensation to be received by the superintendent and is to be distinguished from those laws and opinions relating thereto which treat expenses as being separate and apart from salary or compensation.

This opinion of January 16, 1957, supra, appears to me to be sound and applicable to your present inquiry.

Since the salary and expenses together are considered to be compensation, these amounts once fixed cannot thereafter be increased or decreased during the then term of office of the superintendent.

Section 281, Constitution of Alabama 1901, provides that the salary, fees, or compensation of any officer holding any civil office of profit under this state, or any county or municipality thereof, shall not be increased or diminished during the term for which he shall have been elected or appointed.

County superintendents of education come within the provisions of said Section 281, and also the provisions of Amendment 92, Constitution of Alabama 1901, which is to like effect. **McMurray v. Franklin County Board of Education,** 216 Ala. 144, 112 So. 644; **Petree v. McMurray,** 210 Ala. 639, 98 So. 782; Biennial Report of Attorney General 1926—28, page 630; 1936—38, page 121.

The above results in a negative answer to both of your questions as to those county superintendents of education coming within the provisions of the second sentence of Section 111, supra.

Yours very truly,

RICHMOND M. FLOWERS
Attorney General

August 30, 1963

Hon. C. R. Lawson
Tax Assessor
Hale County
Greensboro, Alabama

Registration — Voters

A prospective voter may not register by mail, but must appear in person before Board of Registrars.

Opinion by Assistant Attorney General McQueen.

Dear Sir:

Your request for an official opinion, bearing date of August 27, 1963, is as follows:

"I will appreciate a ruling from your office on the legality of a member of the Armed Forces of the United States Government registering to vote by mail.

"A young man of my acquaintance has become twenty-one and is stationed with the Air Force on Okinawa and will be out of the states for the next three years.

"Kindly send a copy of your ruling to the Board of Registrars of Hale County."

In answer to your request, you are advised that a member of the Armed Forces who is stationed outside the continental United States may not register to vote by mail.

Amendment 91, Constitution of Alabama 1901, provides for the filling out of a questionnaire by all persons who offer to register to vote and provides, in pertinent part, as follows:

". . . Such questionnaire shall be answered in writing by the applicant, in the presence of the board without assistance . . ."

It can, therefore, be readily seen that the personal appearance of all prospective voters before the Board of Registrars is required by the Constitution.

Yours very truly,

RICHMOND M. FLOWERS
Attorney General

August 30, 1963

Hon. John Graves
State Comptroller
CAPITOL

Schools

The beneficiary of a medical scholarship awarded under the provisions of Section 6 of Act No. 89, General Acts of Alabama 1943, pages 89, 93, must be a resident of the county awarding the scholarship.

Opinion by Assistant Attorney General Sykes.

Dear Sir:

Your request for an official opinion, bearing date of August 27, 1963, is as follows:

"Dr. William L. Hawley, who is Chairman of the Committee on Medical Education and Hospitals of the Medical Association of Alabama, has made the following inquiry:

" 'The Committee on Medical Education and Hospitals, in searching for means of aiding recruitment to the Medical College of Alabama, has discussed the County Scholarship Plan which allows one $400.00 scholarship each year to each county. These scholarships are never fully committed. In 1962-63 only 35 out of 67 are in use. The question has been raised whether the wording of the Act would allow a resident out of the county to receive this scholarship should no worthy student from the county seek it. Could you determine this for our Committee?'

"Since an answer to this question would be of interest to county governing bodies, county boards of censors and to this office, I would appreciate your opinion."

It is my view that the beneficiary of a county medical scholarship in the amount of $400.00 per annum must be a resident of a particular county.

Title 52, Section 509(6), Code of Alabama, Recompiled 1958 (Act No. 89, General Acts of Alabama 1943, pages 89, 93), provides in part as follows:

"The board of trustees of the University of Alabama is hereby authorized and required to establish a scholarship for each county in the state of Alabama in the amount of four hundred dollars ($400.00) per year for the benefit of one resident of each such county, payable from the annual appropriation to the school of medicine . . . "

It is noted that the beneficiary of the scholarship is required to be designated by the Board of Censors of the County Medical Society subject to the approval of the county governing body of the respective counties.

It is my view that the plain meaning of the above noted statute is that the beneficiary of the scholarship shall be a resident of the county awarding the scholarship.

Very truly yours,

RICHMOND M. FLOWERS
Attorney General

September 4, 1963

Honorable Frank H. Amberson
Mayor, City of Boaz
Boaz, Alabama

Appropriations — Municipalities

1. A municipality may assist in fighting fires which occur beyond its corporate limits and police jurisdiction.

2. A municipality may not appropriate funds to purchase forest fire fighting equipment for county forest rangers.

Opinion by Assistant Attorney General Gish.

Dear Sir:

Your request for an official opinion, dated July 22, 1963, is as follows:

"I would appreciate receiving an opinion from your office on the following matter, at your convenience.

"Can the City of Boaz, Alabama legally contribute funds to the Marshall County Forest Rangers, for the purchasing of forest fire fighting equipment, to be used throughout the county.
"At a recent council meeting, Mr. Furman Rice, of the Marshall County Forest Rangers, appeared requesting a contribution from the city to go into a fund for the purchasing of forest fire fighting

equipment to be used in Marshall County. He has and will make similar appearances at the other municipalities of the county, requesting these funds."

A municipality is an instrumentality of the State and its powers are derived from and must be conferred by the legislature. **Town of Graysville v. Johnson,** 33 Ala. App. 479, 34 So. 2d 708. It may exercise only those powers granted in express words, those necessarily or fairly implied in or incident to powers expressly granted, or those essential to the declared objects and purposes of the municipality. **City of Bessemer et al v. Huey,** 247 Ala. 12, 22 So. 2d 325; and **Johnson v. City of Sheffield et al,** 236 Ala. 411, 183 So. 265.

A municipality, through its fire department, is authorized to assist in fighting fires which occur beyond its corporate limits and police jurisdiction. Act No. 558, Acts of Alabama 1955, page 1219.

However, there is no statute in this State which expressly confers the power upon a municipality to appropriate funds to purchase forest fire fighting equipment for county forest rangers, and there is no statute from which such power can be implied.

Therefore, your question is answered in the negative.

Very truly yours,

RICHMOND M. FLOWERS
Attorney General

September 4, 1963

Honorable Donald Kelley
Clerk, City of Prattville
Prattville, Alabama

Elections — Municipalities — Officers and Offices — Vacancies

1. Under the general law, a vacancy on a municipal council must be filled by the remaining members of the council.

2. A vacancy on the Council of the City of Prattville must be filled by election.

Opinion by Assistant Attorney General Gish.

Dear Sir:

Your request for an official opinion, dated July 30, 1963, is as follows:

> "It has become necessary for us to be advised of the legality of Act 25, 1956 Special Session of Legislature calling for a special election to fill vacancies on the City Council of Prattville, Alabama. "Since it is contrary to Title 37, Section 427, Code of Alabama, we would appreciate an opinion."

Title 37, Section 427, Code of Alabama 1940, provides that vacancies in the office of aldermen shall be filled by the municipal council. This statute is applicable to municipalities generally.

Act No. 25, Acts of Alabama 1956, page 49, which is applicable only to the City of Prattville, provides that in the event a vacancy occurs on the Council of said City more than six months before the date of the next general municipal election, the remaining members of the municipal governing body shall call a special election to fill such vacancy.

In **State ex rel. Tyson v. Houghton,** 142 Ala. 90, 38 So. 761, the Court stated in part as follows:

> ". . . When both acts have the same scope, it may be difficult to give both a field of operation; but where, as here, although relating to the same subject-matter, one is local in its operation, and the other general, each having a distinct field of operation, what might seem a conflict between the two disappears in finding spheres for the operation of both. . ."

Act No. 25, supra, should be treated as an exception to Section 427, supra. See **Standard Oil Company of Kentucky v. Limestone County,** 220 Ala. 231, 124 So. 523.

Therefore, I am of the opinion that any vacancy now existing on the Council of the City of Prattville should be filled by a special election held pursuant to the provisions of Act No. 25, supra.

Very truly yours,

RICHMOND M. FLOWERS
Attorney General

September 6, 1963

Honorable J. H. Curry
Attorney for County Board of Education
Pickens County
Carrollton, Alabama

Schools—County Superintendents of Education — Officers and Offices — Pickens County

The salary of the County Superintendent of Education of Pickens County as fixed by the County Board of Education under Act No. 220, Acts of Alabama 1959, page 758, and within the limitations thereof, to be effective for the term beginning July 1, 1963, could not be increased during said term, regardless of the provisions of Act No. 188, approved July 25, 1963, applicable only to counties of 21,850-21,950 population, attempting to authorize such an increase.

Opinion by Assistant Attorney General Screws.

Dear Sir:

Your request for an official opinion bearing date of August 22, 1963 is as follows:

"As attorney for the County Board of Education of Pickens County, Alabama, I have been requested to write you for an opinion as to the amount of salary that may be paid to Alan C. Burns as Superintendent of Education of Pickens County, Alabama.

"The salary of the Superintendent of Education of Pickens County was fixed by Act No. 220 of the Acts of Alabama, regular session, approved September 30, 1959. This act fixes the salary not to exceed $6000.00 with an allowance for traveling expenses not to exceed $2400.00 per annum.

"On August 26, 1960, the County Board of Education of Pickens County passed a resolution to fix the Superintendent's salary at a figure in excess of the highest paid school official in the Pickens County School System. This resolution was to be effective at the beginning of the next term of office, July 1, 1963. The County Board of Education could not determine and fix the salary at a definite figure on that date because the salaries of other school personnel could not be determined due to anticipated increases in those salaries.

"Mr. Ulie B. Sullivan, Representative of Pickens County, introduced House Bill No. 596 on June 21, 1963, to fix the salaries of Superintendents of Education in counties having populations of not less than 21,850 nor more than 21,950. This act was amended and reintroduced on June 27, 1963, and said act was passed on — day of July, 1963, and was approved and signed by Governor Wallace on July 25, 1963. This act fixes the salaries of the County Superintendents of Education at amounts not less than the salaries and expense allowance paid to any principals or other employees of the Boards of Education in such counties. This action was taken to comply with 'Principals and Standards of the Commission on Secondary Schools—The Southern Association of Colleges and Schools.'

"Principal F, Standard No. 3 of the rules and regulations of such commission provides that:

" 'The school's salary schedule should be so planned that the remuneration of the members of its staff will be commensurate to the importance of their services, and will be adequate to insure a standard of living comparable with the social and professional demands made on them. Salaries paid to superintendents of systems including member schools shall in every case be at a higher monthly and annual rate than that paid to the principal or other members of the administrative staff. Salaries paid to principals of member schools shall in every case be at a higher monthly and annual rate than that paid to any member of the faculty. Any reduction of the salary of a person in order to meet this standard will constitute a violation of the standard.'

"The salaries of several principals and employees of the County Board are in excess of $6000.00.

"Please advise the Pickens County Board of Education if it can pay to the Superintendent of Education a salary equal to or in excess of any other employee of the County School Board System or if the salary is limited to that fixed by Act No. 220 of the Alabama Legislature of 1959, regular session."

In answer to the inquiry presented, it is my opinion that: (1) the salary of the County Superintendent of Education of Pickens County is limited to the maximum amount fixed by Act No. 220, Acts of Alabama 1959, page 758; and (2) the salary of the County Superintendent of Education of Pickens County who assumed office at the beginning of the term on July 1, 1963, is further limited by the total amount of such salary fixed by the County Board of Education effective at the beginning of said term.

Although this office has no authority to declare an act of the legislature unconstitutional, I wish to point out that there is grave doubt as to the constitutionality of Act No. 188, H.B. 596, approved July 25, 1963, supra, as the population classification therein set out is based on a "spread" of only 100 persons, which is not reasonably related to the purpose to be affected. Said act, in my judgment, is, in fact, a local act passed under the guise of a general law with local application, and hence in violation of Section 106 of the Constitution of Alabama 1901.—Opinion of the Justices, 262 Ala. 180, 78 So. 2d 1.

Under the theory that Act No. 188, H. B. 596, supra, is unconstitutional and void, it follows that the maximum salary limitation set forth in Act No. 220, supra, governs in the instant situation.

Pretermitting the question of the constitutionality of Act No. 188, H. B. 596, supra, as being violative of Section 106 of the Constitution, supra, Section 281 of said Constitution and Amendment XCII (92) thereto, known as the "Boutwell Amendment," both of which prohibit the increasing or decreasing of the compensation of certain officers during the term for which they were appointed or elected, must be taken into consideration. The compensation of the County Superintendent of Education of Pickens County who assumed office July 1, 1963, as fixed by the County Board of Education and effective as of that date, would have to remain as such during said term in that the same could not be increased or decreased during the period thereof.—Opinion of the Attorney General to Honorable R. C. Vickery, Superintendent, Monroe County Schools, Monroeville, Alabama, dated August 28, 1963 (Ms.).

The exact amount of the compensation allowed the County Superintendent of Education by the County Board of Education to be effective at the beginning of his term of office on July 1, 1963, is not set forth in your letter of inquiry. For the purposes of this opinion, it will be assumed that the County Board of Education passed a resolution which had the effect of fixing the salary at the maximum amount allowed under Act No. 220, supra. This being the situation, Act No. 188, H. B. 596, supra, even if same be considered constitutional and valid, could have no operation during the term of office of the present County Superintendent of Education of Pickens County.

Yours very truly,

RICHMOND M. FLOWERS
Attorney General

September 10, 1963

Hon. Ed Pepper
Commissioner
Alabama Liquefied Petroleum Gas Commission
P. O. Box 991
Montgomery 2, Alabama

Liquefied Petroleum Gas Commission — Permits — Licenses

1. The permit required by Title 26, Sec. 179 (63), Code of Alabama 1940, as Recompiled 1958, is non-transferable.

2. A permit holder may acquire the properties of another permit holder without obtaining a new permit provided he meets the insurance and other requirements prescribed by law or the Commission.

Opinion by Assistant Attorney General Bradley.

Dear Sir:

Your request for an official opinion bearing date of August 6, 1963, is as follows:

"Under the Alabama Liquefied Petroleum Gas Act, Title 26, Section 179(57) - 179(69) certain matters have arisen which make it desirable to obtain your official opinion.

"The first question is whether or not the permit required by Section 179(63) is properly transferable from one party to another. Attached hereto is a copy of a memorandum prepared by a member of the staff of the Public Service Commission discussing this question and suggesting that we seek your opinion on the matter.

"The question arises in connection with the sale of the business of a liquefied petroleum gas dealer where it is desired that the permit issued to the vendor be transferred to the purchaser along with the other properties of the vendor.

"Related to this primary question is another question on which we desire your official opinion and that is where a dealer under this act who holds a permit from this Commission acquires the properties of another dealer who holds a permit from this Commission, may the party acquiring the properties operate them under its own permit as a branch of its business without (1) acquiring a

new permit to cover the added operations, or (2) having the permit of operations acquired transferred to him, if it is determined that a transfer of permit is proper under the act.

"We shall appreciate your official advice in answer to these inquiries at your earliest convenience."

I am of the opinion that the permit required by Title 26, Section 179(63), Code of Alabama 1940, as Recompiled 1958, is not transferable from one person to another person.

A license is not a contract between the State and the licensee, and is not property. **Woco Pep Co. of Montgomery v. City of Montgomery,** 213 Ala. 452, 105 So. 214, 33 **Am. Jur. Licenses,** Sec. 6, p. 330. Also a license, which is a personal privilege, cannot be transferred to another. **Southern Car and Foundry Co. v. State,** 133 Ala. 624, 32 So 235; **Southern Car and Foundry Co. v. Calhoun County,** 141 Ala. 250, 37 So. 425, 33 **Am. Jur. Licenses,** Sec. 21, p. 342.

Sec. 179(63), supra, provides in pertinent part as follows:

"Before **any person shall** engage in or continue in the business * * *, such person shall make application for, * * *, and shall first obtain from the commission a permit, * * *." (Emphasis supplied).

The above section very plainly provides that any person engaging in or continuing in the business of selling, storing, distributing or transporting liquefied petroleum gases, or in the business of selling, installing, servicing, repairing, or adjusting liquefied petroleum gas containers, tanks or systems, at retail, must have a permit.

Nowhere in Article 3 of Title 26, Code of Alabama 1940, as Recompiled 1958, do I find any requirement or authority for a transfer of the permit in question, nor do I find any language in the above Article which would lead me to the conclusion that the permit in question is in reality a franchise that would be obtained, held and transferred on the basis of convenience and necessity of the public.

The law in question appears to me to allow any person who applies for a permit and meets the qualifications prescribed, either by statute or regulation, and pays the fees, to be issued one by the Commission.

Therefore, the answer to your first question is that the permit is not transferable.

Your second question is answered, in part, by the answer to your first question; also, it is my opinion that a dealer, already holding a

permit, does not have to obtain a new permit by virtue of the acquisition of the properties of another dealer who is also licensed, unless such acquisition makes it necessary to acquire and maintain additional forms and amounts of insurance because of an enlarged variety of business activity. See Title 26, Section 179(63) supra.

Should the acquisition of the additional business properties necessitate an enlarged coverage of insurance, all that would be necessary for the permit holder to do is file this additional insurance coverage with the Commission.

Very truly yours,

RICHMOND M. FLOWERS
Attorney General

September 13, 1963

Honorable Oscar C. Martin
Justice of the Peace
Route 1, Box 4
Empire, Alabama

Garnishments — Justices of the Peace

1. A Justice of the Peace who has rendered a judgment against a resident of his County may issue a garnishment summons thereon even though such person is employed in another County.

2. A garnishment summons issued by a Justice of Peace in one County on a judgment rendered by him, to be served in another County, must be directed to any constable of such County, and must be certified as required by Title 13, Section 460, Code of Alabama 1940, as amended.

Opinion by Assistant Attorney General Hall.

Dear Sir:

I have your letter of September 5, 1963, which is as follows:

"Just a point of law to ask you. Is it legal for me to issue a Garnishee (after judgment) on a man living in Walker County and working in another County."

The answer to your question requires me to divide it into two parts in order to make myself clear.

First, a garnishment on a judgment within its prescribed bounds, serves the office of an execution. 38 C.J.S., Garnishment, sec. 2, n. 47, p. 203. A garnishment is defined by Title 7, sec. 995, Code of Alabama 1940, as follows:

> "**Nature of garnishment.**—A garnishment, as employed in this Code, is process to reach and subject money or effects of a defendant in attachment, or in a judgment or decree, or in a pending suit commenced in the ordinary form, in the possession or under the control of a third person, or debts owing such defendant, or liabilities to him on contracts for the delivery of personal property, or on contracts for the payment of money which may be discharged by the delivery of personal property, or on contracts payable in personal property; and such third person is called the garnishee."

Title 13, section 460, Code of Alabama 1940, reads as follows:

> "**Execution to another county.**—When a defendant in judgment removes to another county, or has property in other county than that in which the judgment was rendered, execution on such judgment may be issued by the justice, and directed to any constable of such county, which must be certified by the judge of probate of the county in which the judgment was rendered, or by a justice of the county to which it was sent, who has knowledge of the handwriting of the justice issuing it."

You will note that this Code section authorizes a Justice of the Peace who rendered a judgment against a resident of his County to issue an execution directed to any constable of another County in which such resident has property. This would include a garnishment to reach assets of the judgment debtor in the hands of some third person in the other County.

Second, you will note that Title 13, section 460, requires the process to be "directed to any constable of such county" (not to the Sheriff or any lawful officer of such County), and also requires it to be certified as specified therein. See **Campbell v. Smith,** 116 Ala. 290, 22 So. 545; **Street v. McClerkin,** 77 Ala. 580, 584.

Very truly yours,

RICHMOND M. FLOWERS
Attorney General

September 13, 1963

Honorable Cranford H. Burns, Superintendent
Board of School Commissioners of Mobile County
Mobile County Courthouse
Mobile, Alabama

Schools — County Boards of Education — Funds

1. Local school boards may purchase cafeteria equipment for individual schools from its capital outlay funds.

2. Repayment of funds so expended unauthorized, the payment of interest thereon is also unauthorized.

3. Funds derived from operation of cafeteria are considered school funds under control and operation of local school board, although actual operation of the cafeteria is conducted by the principal of each school as agent of the school board.

Opinion by Assistant Attorney General Madison

Dear Sir:

Your request for an official opinion received in this office on September 5, 1963 is as follows:

"Pursuant to the provisions of Title 55, Sections 240-241, of the Code of Alabama of 1940, the Board of School Commissioners of Mobile County does hereby request of you your written opinion on the questions of law connected with its duties arising out of the following:

"Each individual school in the Mobile County school system operates its own school cafeteria. When a new school is constructed, the School Board purchases about one-half of the cafeteria equipment from construction monies chargeable against capital outlay funds. The individual school, in the person of its principal, purchases the remainder of the necessary cafeteria equipment under a conditional sales contract from a local supply house. This equipment is paid for by the individual school from cafeteria income over a two or three year period; a rather difficult feat.

"The cafeteria operates with the assistance of the Federal lunchroom program, receiving grants therefrom, and is not permitted to make a profit. Often times it is necessary to decrease the already nominal cost of the meals to the students to avoid making a profit.

"The School Board has elected to bear the entire cost of cafeteria equipment from its capital outlay funds at the time of the construction of the individual school, under an agreement with the school to repay the School Board over a ten year period, the unpaid balance of the money so advanced to bear interest to the School Board at the rate of three percent per annum.

"The cafeteria fund is administered by the individual school on a perpetual basis so long as the school is operated. Direct supervision over the operation of the cafeteria is exercised by the principal, through a lunchroom manager. This manager, the cooks and attendants are paid from the cafeteria as a part of the operating expense. While the cafeteria and the funds are under the general oversight of the School Board, the proceeds never enter the accounts of the School Board, nor form a part of its funds. When a particular school is abandoned, any balance in the particular fund is transferred to those schools to which pupils were transferred who had been attending the abandoned school.

"Based upon the foregoing statement of facts, the following questions are propounded to you as Attorney General of the State of Alabama:

"(1) Does the right exist in the School Board to purchase the cafeteria equipment for the individual schools from its capital outlay funds?

"(2) If your answer to question (1) is in the affirmative, may the Board of School Commissioners provide for the repayment of the funds so expended for cafeteria equipment from the individual schools?

"(3) May a reasonable interest charge, for example three percent, be added to the unpaid balance during the period of repayment by the individual schools?

"(4) Would such repayment by the individual schools properly be re-credited to the capital outlay equipment account from which it had been expended, rather than carried as an account receivable in the regular operating account system?"

In the operation of the public schools of this state, cafeterias, where necessary, are considered an essential part of the public school system and its proper operation.

The expenditure of school funds by county boards of education for the purpose of equipping school lunch rooms was ruled in an opinion of this office, reported in Quarterly Report of Attorney General, Volume

41, page 27, to be for the health of students and therefore an expenditure for "public school purposes."

In another opinion of this office, reported in Quarterly Report of Attorney General, Volume 50, page 104, the statement is made that Federal funds for a lunchroom program are turned over by the State Board of Education to county and city boards of education who handle the funds "just as other public school funds are handled."

There is still another and important opinion of this office written to Honorable W. Chandler McGowin, Superintendent, Baldwin County Schools, on July 28, 1955, which ruled that the county board of education is liable for the unpaid bills in the operation of the school cafeteria due to the shortage of the principal.

These various opinions and my own independent consideration lead me to the conclusion that the funds derived from the cafeteria operation are public school funds which should be turned over to the custody and control of the Board of School Commissioners of Mobile County.

The Board may, of course, operate through its agents and employers, but the operation may not be separated from the Board's direction and control to be considered as a separate operation by the principal in each school with the receipt and expenditure of funds from the cafeteria operation subject only to the principal's control and direction.

As I view your request, and in the light of what has been ruled herein, the arrangement which you propose is in reality an agreement with yourself in which the arrangement will possibly result in a profit to the Board through the payment to itself of interest.

It results that question (1) is answered in the affirmative, (2) and (3) in the negative, and (4) answered by the negative answer to (2) and (3).

In the preparation of this opinion, due prior consideration has been given to Section 270, Constitution of Alabama 1901, and cases such as **Graham v. City of Mobile,** 17 Ala. App. 19, 81 So. 355; **Board of School Commissioners of Mobile County v. Hahn,** 246 Ala. 662, 22 So. 2d 91, and the opinions reported in Quarterly Report of Attorney General, Volume 21, pages 40 and 189.

Yours very truly,

RICHMOND M. FLOWERS

Attorney General

September 18, 1963

Hon. Ed. Ewing
Director
Bureau of Publicity and Information
Montgomery, Alabama

Bureau of Publicity and Information—Atomedic Hospitals. The Bureau of Publicity and Information may, in its discretion, assist in the construction of an Atomedic Hospital to be displayed at New York World's Fair.

Opinion by Assistant Attorney General McQueen.

Dear Sir:

Your request for an official opinion, bearing date of September 9, 1963, is as follows:

"The Bureau of Publicity and Information for the State of Alabama would like to use the sum of $10,000.00 to assist with the construction of Atomedic Hospital at the New York World's Fair. We feel that the Hospital will be outstanding publicity for the State of Alabama due to the fact that the idea for the Hospital was born in our State. The Hospital will be the official Worlds Fair medical facility and will be visited by outstanding men of the medical profession from throughout the world, as well as by leading industrialists from across the nation who have contributed materials for its construction.

"I would appreciate an advisory opinion from you as to whether such an expenditure would be proper under the provisions of Act No. 712, Regular Session, 1951. Your attention to this matter will be appreciated."

My answer to your inquiry is in the affirmative.

Section 489 of Title 55, Code of Alabama Recompiled 1958, establishes a State Bureau of Publicity and Information and confers upon such Bureau the power and authority to plan and conduct all State Programs for information and publicity designed to publicize Alabama and the industrial and other features of the States.

It is my information that a group of interested citizens have secured funds for the purpose of building an Atomedic Hospital in Montgomery. My information is that this hospital is very near completion, and within the very near future will be in operation for the purpose of treating patients under the method originated by Dr. Hugh McGuire of Montgomery, Alabama. In truth, and in fact, this hospital is

the only one of its kind existing anywhere in the world. It has been given world-wide publicity and it is a well known fact that it is a great step forward in medical history. Many people from within the State of Alabama and from without the State of Alabama have visited this new institution. It is a matter of common knowledge that after it is completed and goes into full operation, it will attract many more visitors and tourists to the State.

The construction of a model of the Atomedic Hospital at the New York's World Fair will without question give great publicity to the State. Your Bureau is authorized to expend its funds for the purposes of planning and conducting programs designed to publicize the State and by like token to attract tourists to this State.

It, therefore, follows that your Bureau may expend its funds for the purposes set out in your letter, as undoubtedly this expenditure will attract many people to this State for the purpose of seeing the first **Atomedic** Hospital in operation.

Yours very truly,

RICHMOND M. FLOWERS

Attorney General

September 19, 1963

Hon. T. C. Almon
Judge of Probate
Morgan County
Decatur, Alabama

Probate Judges—Notaries Public with Powers of Justices of the Peace

There is no authority of law for a Probate Judge to appoint a Notary Public with powers of a Justice of the Peace.

Opinion by Assistant Attorney General McQueen.

Dear Sir:

Your request for an official opinion, bearing date of September 11, 1963, is as follows:

"Will you please give me the benefit of your official opinion as to whether or not under the recent Acts of the Legislature authorizing the Probate Judges to appoint Notaries Public for both their own

county and the State at Large, would be authorized to appoint Notaries Public with ex officio Justice of the Peace powers."

My answer to your inquiry is in the negative.

The recent acts of the Legislature authorizing probate judges to appoint notaries public did not change the method of appointment of notaries public with powers of justices of the peace. H. B. 263 (Ms); H. B. 265 (Ms.) and House Bill 266 (Ms.). See also Title 40, Sections 15-20, Code of Alabama 1958 Recompiled.

The authority to appoint notaries public with powers of justices of the peace is contained in Section 168 of the Constitution of Alabama 1901, and this power is conferred upon the governor. I know of no act of the recent Legislature proposing an amendment to this section of the Constitution.

Yours very truly,

RICHMOND M. FLOWERS
Attorney General

September 19, 1963

Hon. James E. Moore
County Attorney
Mobile County
Mobile, Alabama

Elections — Voting Machines

An Automatic Printer Type Voting Machine may be used in Alabama if such machine is constructed so as to meet the requirements of Title 17, Sections 97 and 112, Code of Alabama 1940.

Opinion by Assistant Attorney General McQueen.

Dear Sir:

Your request for an official opinion, bearing date of July 3, 1963, is as follows:

"Re: Use of New Type Voting Machines

"Mobile County plans to buy some additional voting machines in the near future. One of the machines we have under consideration

is the Automatic Voting Machine with the new 'Printer' mechanism. "This machine operates as follows: The printed return sheets are automatically ejected from the machine within seconds after the close of the polls showing the total votes cast for each candidate and on each question. The proof sheet, in the morning, shows election officials that all counters on the machine were at 000 prior to the opening of the polls. This same information is provided on the return sheets obtained after the polls close. (For additional information please see enclosed brochure and sample return sheets.)

"The County Commission of Mobile County has asked me to request your opinion as to whether these machines with the 'Printer' mechanism can be used under existing Alabama election laws."

My answer to your inquiry is in the affirmative, subject to the following conditions

Section 97 of Title 17, Code of Alabama 1940, sets out the requirements for voting machines to be used in elections in this State.

I cannot tell from the brochure furnished with your request as to whether or not this machine meets all of the requirements as set out in the cited code section. This is a question of fact and can only be determined by an inspection of the machine itself.

Section 112 of Title 17, Code of Alabama 1940, requires that the election officials for each voting machine open and inspect the counting compartment of the machines in the presence of the watchers and any representative of any newspaper or press association who cares to be present, giving full view of all of the counter numbers. The brochure furnished with your request makes the statement that the counter dials may be read directly if desired. Here again, this is a question of fact: it can only be determined as to whether or not the counting compartment may be opened after the election for inspection by an examination of the machine.

Assuming that the machine here considered meets all the requirements of Sections 97 and 112, Code of Alabama 1940, the fact that the machine does mechanically what the election officials are required to do normally by Section 112 would not in and of itself render it illegal for use in Alabama.

Therefore, assuming that the machine meets the requirements of Sections 97 and 112 of Title 17, Code of Alabama 1940, it may be legally used in the State of Alabama.

Yours very truly,

RICHMOND M. FLOWERS
Attorney General

September 20, 1963

Hon. T. C. Almon
Judge of Probate
Morgan County
Decatur, Alabama

Probate Judges — Notaries Public — H. B. 265, 1963 Legislature.

Under the provisions of H. B. 265, 1963 Legislature (Ms.), Probate Judges of the State have authority to appoint Notaries Public for the State at Large.

Opinion by Assistant Attorney General McQueen.

Dear Sir:

Your request for an official opinion, bearing date of September 11, 1963, is as follows:

"Will you please give me the benefit of your official opinion on House Bill 265 which amended Section 1, of Act 431, providing the appointment of Notaries Public for the State at Large.

"Since the Judge of Probate has no jurisdiction outside of his county, I am a little concerned as to whether or not I would have the authority to appoint a Public Official (Notary Public for the State at Large), with authority to act in Jefferson, Mobile or Houston Counties.

"Please give me the benefit of your opinion on this Act."

My answer to your inquiry is in the affirmative.

Under the provisions of H. B. 265, 1963 Legislature (Ms.), which act amends Section 1 of Act No. 431, Regular Session of the Legislature 1943, Page 400, the several probate judges of the State are authorized to appoint notaries public who shall have jurisdiction over the State at Large. The only change brought about by the amendment is that the phrase "probate judges of the several counties of the state" is placed in the act where the word "governor" appeared in the original act.

In the case of **Sisk v. Cargile,** 138 Ala. 164, 35 So. 114, the Supreme Court of Alabama held that the Constitution of Alabama 1901, as did all former Constitutions of the State, vested legislative authority in the State Legislature, whose powers are plenary and unlimited except by such limitations imposed by the Constitution itself. This principle of

law has been followed many times. The last expression of the Supreme Court in this regard is found in the case of **Ex Parte Foshee,** 246 Ala. 604, 21 So. 2d 827.

I know of no limitation imposed by the Constitution prohibiting the Legislature from authorizing the several probate judges of this State to appoint notaries public for the State at Large.

You are, therefore, advised that under the provisions of H. B. 265 (Ms.), the authority has been conferred upon you as Probate Judge of your county to appoint notaries public for the State at Large, and you may act under the provisions thereof.

Yours very truly,

RICHMOND M. FLOWERS
Attorney General

September 23, 1963

Honorable Ed Pepper, Commissioner
Alabama Liquefied Petroleum Gas Commission
Montgomery, Alabama

Appropriations — State Departments

One department of the state may be reimbursed by another state department for services performed or other things of value granted to such other department which is not normally expected or covered in the normal duties of such department and for which no appropriation was made by the Legislature.

Opinion by Assistant Attorney General Webb.

Dear Mr. Pepper:

I have received your letter of September 6, 1963 in which you request my opinion as follows:

"On account of insufficiency of funds appropriated for salaries of the Public Service Commission for the fiscal year ending September 30, 1963, particularly for salaries for the last quarter of that fiscal year, it will be necessary for the Commission to place three of its employees on leave without pay for the month of September, 1963. Funds are available to supply this deficiency to the credit of the Alabama Liquefied Petroleum Gas Commission, which Com-

mission is composed of the Public Service Commissioners under Act No. 275 of the Legislature of Alabama, regular session 1951, approved July 27, 1951.

"The duties of the three employees involved include assistance to the LP Gas Commission in performance of its duties under Act 275 referred to.

"Your official opinion is requested upon the following questions: May the LP Gas Commission pay the salaries of these employees involved by paying such salaries direct for the month of September, 1963, and if not may the LP Gas Commission transfer sufficient funds to the credit of the Public Service Commission to make up the deficit to the credit of the Public Service Commission so that the three employees involved may be paid for September, 1963."

Under the provisions of Act No. 275, Acts of Alabama 1951, page 559, the Alabama Liquefied Petroleum Gas Commission is composed of the President and the two Associate Members of the Alabama Public Service Commission, and the Commission has the authority, subject to the provisions of the Merit System, to employ such assistants and inspectors as may be necessary to carry out the provisions of the act, and to prescribe their duties. All expenses certified by the Commission as properly and necessarily incurred in the discharge of its duties, including authorized compensations, shall be payable from the funds collected pursuant to the provisions of the act.

I am of the opinion that, if the duties of the employees of the Alabama Public Service Commission are not specifically related to the Alabama Liquefied Petroleum Gas Commission and the duties of the employees performed for the Gas Commission are over and above those duties normally performed by or expected of the Public Service Commission for which the Legislature made an appropriation, the Public Service may be reimbursed an amount deemed appropriate for the value of such services to the Gas Commission.

The intent of those limitations placed in the Appropriations Act is to cover all duties expected of, or normally performed by, the department affected. Additional duties performed by one department for another have long been recognized as reimbursable. To rule otherwise, would be to allow the recipient of such duties to increase its appropriation by exacting additional duties or other things of value from other departments and, in effect, profiting from the appropriations made to such other department. Such a condition, in my opinion, would be contrary to the provisions of the Appropriations Act.

Very truly yours,

RICHMOND M. FLOWERS
Attorney General

September 24, 1963

Hon. G. H. Stacy
Judge of Probate
Bibb County Courthouse
Centreville, Alabama

Taxation — Ad Valorem Taxes — Plant Exemptions

Exemption from ad valorem taxation of plants, industries, and factories under the provisions of Title 51, Section 3, Code of Alabama 1940, Recompiled 1958, remains in effect for the period granted, even though, prior to the termination of the exemption period, a corporation other than the original one owns and operates the plant, industry, or factory, so long as it continues to be operated for the purposes for which it was constructed.

Opinion by Assistant Attorney General Payne.

Dear Sir:

Your request for an official opinion of this office bearing date of September 10, 1963, reads as follows:

"During the year 1954 a garment industry by the name of Cahaba Manufacturing Company, a partnership, which now employes approximately 312 persons, moved from St. Paul, Minnesota to Centreville, Alabama, and a modern plant was constructed by the Town of Centreville under the provisions of the Wallace Act and leased to Cahaba Manufacturing Company for the twenty (20) year duration of the bond issue. The title to the plant building and the lot upon which it was situated, subject to the lease, remained in the Town of Centreville with the lessee having the right to purchase the plant building and lot from the Town within the lease period.

The partners involved in Cahaba Manufacturing Company were the same partners who owned the parent firm by the name of Simon & Mogilner which had been operating under the name in St. Paul prior to removal to Alabama. Prior to the removal of this firm to Alabama the officials of Bibb County and the Town of Centreville agreed to relieve said Simon & Mogilner and Cahaba Manufacturing Company from the payment of all taxes, except school taxes, for a period of ten (10) years and resolutions were passed by the Court of County Commissioners of Bibb County and by the Town Council of Centreville, Alabama, relieving said Cahaba Manufacturing Company from the payment of all taxes, except school taxes, for a period of ten (10) years from and after October 1, 1954.

"The firm of Simon & Mogilner, a partnership, is now operating plants in Centreville, Fayette, Blountsville and Sylacauga, Alabama, and their main office and shipping point in Birmingham, Alabama, under different names in each locality such as Cahaba Manufacturing Company in Centreville, Blountsville Manufacturing Company in Blountsville, etc.

"The partners involved in the firms of Simon & Mogilner and Cahaba Manufacturing Company during 1962 purchased the above mentioned plant building and plant site from the Town of Centreville and the title to said property was conveyed by the Town of Centreville on November 30, 1962, at the request of said partnerships, to a corporation recently organized by the partners owning said partnerships by the name of Simon and Mogilner Realty Corporation, a corporation, which now holds the title to said plant building and site. On January 21, 1963, this property was assessed in the name of Simon and Mogilner Realty Corporation for the year 1963.

"Inasmuch as the title to the above mentioned plant building and plant site was vested in the Town of Centreville, Alabama, at the time the ten (10) year exemption was granted by Bibb County, the Town of Centreville, and the State of Alabama, and it was understood and agreed that these people should have ten full years of tax exemption, exclusive of school taxes, upon all of their property, the said Cahaba Manufacturing Company and Simon and Mogilner Realty Corporation have recently requested Bibb County and the Town of Centreville to do whatever is necessary to relieve them from the payment of taxes upon the above mentioned plant building and plant site for the tax years 1963 and 1964 and until October 1, 1964.

"Please give me your opinion as soon as possible as to whether or not the Court of County Commissioners of Bibb County, Alabama, and the Town Council of the Town of Centreville, Alabama, have the authority at this time to relieve Simon and Mogilner Realty Corporation from the payment of taxes, with the exception of school taxes, for the tax year 1963 and the tax year 1964, upon the above mentioned plant building and plant site upon which such building is located."

The answer to your question relative to whether or not the Court of County Commissioners of Bibb County and the Town Council of the Town of Centreville may continue the exemption previously granted by them to the Cahaba Manufacturing Company, a partnership, to the Simon and Mogilner Realty Corporation, a corporation, is found in a prior opinion of this office reported in Quarterly Report of Attorney General, Vol. 68, page 22. The substance of this opinion is that so long as the plant, industry, or factory continues to be operated for the pur-

pose for which it was constructed and for which the exemption was granted, a change in the ownership or the name would not affect the period of exemption originally granted. In this connection see also Quarterly Report of Attorney General, Vol. 93, page 43. Therefore, the exemption originally granted to the Cahaba Manufacturing Company, under the facts stated in your request for opinion, would survive and continue for the remainder of the original ten-year period granted, to the Simon and Mogilner Realty Corporation.

Incidentally, you advised while discussing this matter with me in my office several days ago that the present corporation continues in the same business as the original company, the Cahaba Manufacturing Company, in the manufacture of infants' and childrens' play clothes, etc. This type industry qualifies within the express provisions of Title 51, Section 3, as amended, Code of Alabama Recompiled 1958.

In your request you also state that the present corporation has recently requested Bibb County and the Town of Centreville to do whatever is necessary to relieve them from the payment of taxes, not only upon the plant building, but the **plant site** for the tax years 1963 and 1964 and until October 1, 1964. Section 3, supra, which authorizes granting of the plant exemption states: "Provided nothing herein shall authorize the exemption of the land on which such plants, industries or factories are located or proposed to be located." Hence, the realty on which the plant is located would be subject to payment of ad valorem taxes.

In the above connection, however, you state that the plant site was purchased from the Town of Centreville on November 30, 1962. Therefore, the realty being owned by Centreville on October 1, 1962, the law day for the tax year 1963, it follows that there would be no ad valorem taxes due for the current tax year 1963. The realty in question would first become liable for ad valorem taxes on October 1, 1963, with the tax due and payable on and after October 1, 1964 for the 1964 tax year.

It is my conclusion that the plant exemption originally granted continues with the Simon and Mogilner Realty Corporation for the period of the original grant of the exemption without any formal proceedings taken by either the County Commissioners or the Town Council of Centreville. However, if deemed advisable a resolution by the County Commissioners and Town Council continuing the exemption for the benefit of the aforementioned corporation may be passed and a copy served upon the tax assessor for his record and information.

Very truly yours,

RICHMOND M. FLOWERS

Attorney General

September 24, 1963

Mr. E. S. Tunstall
Tax Assessor
Baldwin County Court House
Bay Minette, Alabama

Taxation — Ad Valorem Tax Assessments — Description of Real Estate.

Assessment of land for ad valorem tax purposes described by Section, Range and Township or fractional part thereof sufficient under the facts.

Opinion by Assistant Attorney General Payne.

Dear Sir:

This will acknowledge your letter dated September 6, 1963, requesting opinion of this office which reads as follows:

"In connection with my duties as Tax Assessor of Baldwin County, Alabama, I have on several occasions assessed property to a designated owner described, for example, as follows:

"Northeast Quarter of Northeast Quarter, Section 12, Township 3 South, Range 3 East, less one acre to Tom Brown.

"The acre assessed by Tom Brown is accurately described on the assessment which he makes and the acre assessed to Tom Brown is correctly noted on the plat book, which also shows that the remaining 39 acres of the said 40-acre tract is assessed to the designated owner.

"The Tax Collector of this county has on several occasions taken an error on such assessments.

"My office is now being examined by the State Examiners of Public Accounts and one of the examiners is insisting on charging me with assessments where the Collector has taken an error in cases such as that set out above.

"I will appreciate your advising me if a description such as that described above complies with the provisions of Title 51, Section 47 of the Code."

Title 51, Section 47, Code of Alabama 1940, Recompiled 1958, as I see it, is not mandatory in its requirements. It merely prescribes how

real estate **may** be described in those situations set out therein numbered one through nine inclusive. Obviously a more definite and certain description is permissible, depending upon the circumstances of the particular situation. The purpose of description in the assessment of real estate for taxation is designation and identification—the purpose of the statute such as Section 47, supra, is to apprise the owner that it is his property that is being assessed, and the purchaser at the tax sale what property he is buying. **Driggers v. Cassady,** 71 Ala. 529, 534; **Jones v. Pelham,** 84 Ala. 208, 4 So. 22, 24.

In an opinion of this office to the Honorable H. E. Kendrick, Tax Collector, Dallas County, Quarterly Reports Attorney General, April through June, 1940, Vol. 19, P. 142, the question to be resolved was the sufficiency of an assessment of real estate described as "11 acres in N½ of NW ¼ of NE ¼, Section 5, Township 16, Range 8." In that case, it should be borne in mind, that it was the "11 acres" that was being assessed. It was not possible to identify the location of the 11 acres as described and the opinion ruled such description was insufficient. The opinion also held as sufficient this description: "4 acres on the west side of NE ¼ of NW ¼ of Section 3, Township 15, Range 10." If, the "4 acres" could properly be located in that case then certainly the thirty-nine acres could equally be located and identified in your situation. The rule governing proper description of property for assessment purposes does not imply that every inch of the ground must be pinpointed but, if the description is such that the location of the lands can be ascertained, then in such case, the description would seem to be sufficient. As I see it, if four acres out of forty can be located on the west side of a ¼ Section of land, then in my opinion thirty-nine acres out of forty, as in your case, can certainly be located with ease.

In the example description in your case, as shown above, it is not the one acre to Tom Brown that is being assessed but on the contrary it is the entire forty-acre tract less one acre that is being assessed to the designated owner. The tract is described by township, range, section and the particular quarters of the section. The description as shown necessarily implies the existence of a map or plat otherwise such description would not be possible. The example description is precise and a mere reference to the map or plat on file in your office as Tax Assessor will reveal the exact location of the thirty-nine acres being assessed to the particular owner. The Courts, as you know, take knowledge of that which is commonly known to the public generally. In this connection let me here state that the Courts take judicial knowledge of the ranges, townships, and sections in a county. **Brannon v. Henry,** 39 So. 92, 142 Ala. 698. Furthermore, the Courts judicially know that a section of land (Section 12 in your case) contains 640 acres. **Elliott v. Coleman & Davis,** 54 So. 491, 170 Ala. 355. Therefore, referring to the example description, the NE ¼ or ¼ of Section 12 would contain ¼ of 640 acres or 160 acres; breaking it down further the NE ¼ of said NE ¼ or ¼ of 160 acres would be forty acres. This ties in with your statement that "the acre assessed to Tom Brown is

correctly noted on the plat book, which also shows that the **remaining thirty-nine acres of the said forty-acre tract** is assessed to the designated owner." In addition, you state that the acre assessed by Tom Brown is accurately described on the assessment which he makes and said acre is correctly noted on the plat book. Consequently, access to the plat book discloses the Tom Brown acre, properly identifying same.

In **Phillips v. Hinkle,** 262 Ala. 330, 78 So.2d 800, 802, the description of the property assessed complained of was "Lot 7, Block 1, Central Tract." The Bill of Complaint set out that this tract was properly recorded in the probate office of the county involved. The Court ruled that in determining the sufficiency of the description of land for tax purposes by reference to a map or plat the description must be such as to enable identification of the property by prospective purchasers. The Court then stated: "We consider the description in the present tax assessment and tax deed to be adequate." I see no difficulty in identifying and locating the property assessed by the example description identifying and locating the property assessed by the example description set out by you in your requeset for opinion.

In summation, it is my opinion that the description of the property assessed to the designated owner would sufficiency apprise the owner that it is his property that is being assessed; also, it would properly locate the property to a prospective purchaser at a tax sale.

Very truly yours,

RICHMOND M. FLOWERS
Attorney General

September 25, 1963

Mrs. Myra Sutton
Clerk, Water Works Board
Town of Bayou La Batre
Bayou La Batre, Alabama

Attorneys — Municipalities

The Town Attorney of the Town of Bayou La Batre may represent the Water Works Board of said Town.

Opinion by Assistant Attorney General Gish.

Dear Mrs. Sutton:

Your request for an official opinion, dated August 26, 1963, reads as follows:

"The Water Works Board of the Town of Bayou La Batre in 1958 elected a temporary attorney, salaried at $75.00 per month. During the same time the above attorney was being paid for services to the City of Bayou La Batre. Both of these positions were salaried.

"Your opinion is requested as to whether the afore-mentioned bill for the Water Works Board of the Town of Bayou La Batre are in order for payment."

Title 37, Section 414, Code of Alabama 1940, reads in part as follows:

"No alderman or officer or employee of the municipality shall be directly or indirectly interested in any work, business, or contract, the expense, price or consideration of which is paid from the treasury. . . ."

In an opinion reported in Quarterly Report of Attorney General, Vol. 102, page 15, this office held that the directors and employees of an incorporated municipal utilities board are officers and employees of the municipality within the meaning of Section 414, supra. The funds of such a board are municipal funds. See Quarterly Report of Attorney General, Vol. 34, page 22.

Therefore, the question presented by your request is whether the Town Attorney of the Town of Bayou La Batre is an officer or employee of the municipality.

I assume from your request that the Attorney to whom you refer conducts a general practice and represents clients other than the Town of Bayou La Batre and its Water Works Board.

A municipal attorney does not hold a municipal office. He has been called an employee of the municipality. **State ex rel. Glenn v. Wilkinson,** 220 Ala. 172, 124 So. 211. However, the relationship between the Town of Bayou La Batre and its attorney is that of client and attorney and not that of master and servant.

I am of the opinion that the term "employee" as used in Section 414, supra, refers to one who may be classified as a servant of the municipality.

Therefore, the Town Attorney of the Town of Bayou La Batre is neither an officer nor an employee of the municipality within the meaning of Section 414, supra, and he is not prohibited from representing the Water Works Board of said Town.

Premises considered, you are advised that the attorney to whom your request refers is entitled to compensation for services rendered the Water Works Board of the Town of Bayou La Batre.

Very truly yours,

RICHMOND M. FLOWERS
Attorney General

September 25, 1963

Honorable B. P. Lovelace, Jr.
Tax Assessor, Lauderdale County
Florence, Alabama

Ad valorem taxes — Motor Vehicles — Municipalities — Taxation

Where territory was annexed to the City of Florence on July 9, 1963, ad valorem taxes imposed by said City should be collected beginning October 1, 1963, on all taxable property, including motor vehicles, located within such territory.

Opinion by Assistant Attorney General Gish.

Dear Sir:

Your request for an official opinion, dated August 9, 1963, is as follows:

"There has arisen a question in the assessing of property in our county which needs an opinion from your office to clarify the problem.

"In July of this year (1963), the City of Florence annexed certain areas of Legislative action, becoming effective July 9th, 1963. We assume there will be no tax due the City of Florence for 1963 assessment as the property involved was not a part of the city October 1, 1962.

"The question pending is regarding assessing Motor Vehicle, and I refer you to Act 660 of 1961 Legislature, Amending Sec. 704 of 1940 Code, is 'Shall we assess and the Tax Collector collect tax for City of Florence on Motor Vehicles, purchased new or brought in from out of state since July 9th, 1963 in this area annexed to the City in July 1963?' "

The problem presented by your request is controlled by the Constitution of Alabama 1901, Section 216. Said Section contains a number of separate provisions applying to various municipalities. Some of these municipalities are specifically named in said Section. See also Constitution of Alabama 1901, Amendment LVI.

The first provision of Section 216, supra, does not apply to all municipalities in this State. **W. S. Brewbaker, Inc. v. City of Montgomery,** et al, 270 Ala. 460, 119 So. 2d 887. However, it does apply to the City of Florence.

Said provision of Section 216, supra, reads as follows:

"No city, town, village, or other municipal corporation, other than as provided in this article, shall levy or collect a higher rate of taxation in any one year on the property situated therein than one-half of one per centum of the value of such property as assessed for state taxation during the preceding year; . . ."

By virtue of Title 37, Section 700, Code of Alabama 1940, the City of Florence is authorized to levy a tax on property situated within its corporate limits based upon the value of such property as assessed for State taxation as shown by the books of assessment for the State and county tax year ending the 30th day of September next succeeding the levy. Cf. Quarterly Report of Attorney General, Vol. 84, page 38.

The ad valorem taxes of the City of Florence are collected in advance. This is true in all municipalities which are authorized to collect taxes under the provisions of Section 700, supra. Said taxes become due and payable on the first day of October of each year, the law day for the levy of such taxes, at the time State and county taxes for the preceding year are due and payable. Quarterly Reports of Attorney General, Vol. 76, page 58, and Vol. 80, page 12.

Section 700, supra, applies to municipal ad valorem taxes imposed by ordinance upon all property, real and personal, including motor vehicles, located within the City of Florence except that property which is exempt from such taxes. See also Act No. 660, Acts of Alabama 1961, page 822, the statute to which your request refers.

Therefore, I am of the opinion that you should assess and the Tax Collector of Lauderdale County should collect for the City of Florence in 1963, the ad valorem taxes, imposed by ordinance of said City, on all taxable property, including motor vehicles, located within the territory annexed to said City on July 9, 1963. Such City taxes then will become due and payable on October 1, 1963, at the beginning of the tax year.

Very truly yours,

RICHMOND M. FLOWERS
Attorney General

September 25, 1963

Honorable Lee M. Otts
Attorney for Escambia County
Board of County Commissioners
Brewton, Alabama

Escambia County — Several questions answered pertaining to duties, expenditures and purchasing procedures of the Escambia County Board of County Commissioners, under provisions of Acts 410, 411, 412, and 413, Acts of Alabama 1963, Regular Session.

Opinion by Assistant Attorney General Webb.

Dear Mr. Otts:

I have received your request of September 2, 1963, which reads as follows:

"The following Local Acts pertaining to Escambia County, Alabama were passed by the Legislature and signed by the Governor on August 30, 1963: House Bill #741 creating a purchasing system and a purchasing agent for Escambia County; House Bill #742 abolishing the Board of Revenue of Escambia County and creating in lieu thereof a Board of County Commissioners; House Bill #743, abolishing the Inferior court of Escambia County and creating another inferior court in lieu thereof; and House Bill #744 providing for increases in the salaries of certain of the Sheriff's deputies. Certain parts of these acts are not clear in their meaning and we respectfully request that you render us an opinion giving an answer to the following questions.

"1. What is the effective date of these four acts?
"2. House Bill #742 provides for the election of a Chairman of the newly created Board of County Commissioners at the general election in 1964. Who is to be Chairman of that body from the effective date of the Act until the elected chairman is installed in January of 1965?

"3. Will the Chairman serving during this interim period receive the salary as set out in the act for the Chairman of said body?
"4. Assuming that your answer to question two will be that Judge Reo Kirkland as Probate Judge and as Chairman of the Board of Revenue will now be Chairman of the newly created Board of County Commissioners, will Judge Kirkland, as such Chairman, be authorized to sign warrants for the payment of claims against the County and to execute gasoline tax anticipation warrants for the purpose of borrowing money and other such instruments as

he has been authorized to do in the past as Probate Judge and Chairman of the Board of Revenue?

"5. Will the four associate members of the Board of County Commissioners be entitled to receive the salary as set out in said Act for said members from the effective date of said Act?

"6. Will the Chairman and the associate members of the Board of County Commissioners be required to make new bonds as members of this Board, or will their present bonds as Chairman and members of the Board of Revenue suffice?

"7. Who shall have the responsibility and duty of keeping the minutes and other records of the Board of County Commissioners?
"8. Under this new act are the Board Members entitled to have transportation furnished them at the expense of the County while performing their official duties?

"9. House Bill 741 creates a purchasing system for Escambia County and provides that the Chairman of the Board of County Commissioners shall be purchasing agent. At what time does the provisions of this act take effect?

"10. If your answer to the preceding question is that said Act will become effective prior to January of 1965, then, who is to be such purchasing agent?

"11. Assuming that House Bill 741 effectively repealed previous legislation creating a purchasing system for Escambia County, but that the provisions of said new act will not take effect until January of 1966, can the Board of County Commissioners by resolution create a purchasing system under which to operate until January of 1966?

"12. Will the Judge of the Inferior Court be entitled to receive the increase in salary granted him in House Bill 743 beginning with the effective date of said act?

"13. Will the County Solicitor be entitled to receive the additional compensation for attending court sessions in Atmore as provided in House Bill 743 beginning with the effective date of said Act? The solicitor is appointed by the Circuit Solicitor, not for any certain term, but at the pleasure of the Circuit Solicitor.

"14. Are the increases in salary for certain members of the Sheriff's Department as provided in House Bill 744 legal claims against the County?

"15. How shall it be determined who is the 'second deputy'?"

1. The acts referred to by you are Act 410 (H.B. 741), Act 411 (H.B. 742), Act 412 (H.B. 743), and Act 413 (H.B. 744). By provisions of the last section of each act, the effective date is the first day of the month next following the date of enactment. Each of these acts was signed by the Governor on August 30, 1963. I am, therefore, of the opinion that the effective date is September 1, 1963, with certain qualifications as to Act No. 410, supra, as explained in my answer to your Question No. 9.

2. Act No. 231, Local Acts of Alabama 1943, page 129, provides that the Judge of Probate of Escambia County shall be a member of the Board of Revenue of Escambia County and serve as Chairman. I note that Section 3 of Act No. 411, supra, provides, in pertinent part:

> "However, the incumbent members of the county governing body shall serve as members of the Board of County Commissioners hereby created until the expiration of the terms for which they were elected, and until their successors are elected and qualified."

Act No. 231, supra, is repealed by Section 9 of Act No. 411, supra, only insofar as the same is in conflict. I find no conflict in these two provisions until January of 1965. I am, therefore, of the opinion that the Judge of Probate shall serve as Chairman of the newly-created Board of County Commissioners until the expiration of his term in January of 1965.

3. The Judge of Probate continues to serve as Chairman by virtue of his primary office of Judge of Probate, receiving an ex-officio fee or allowance for such duties. The salary of the new Chairman does not apply to the Probate Judge acting as Chairman. I am, therefore, of the opinion that your third question should be answered in the negative.

4. I answer your fourth question in the affirmative. See Title 12, Sections 51 and 53, Code of Alabama 1940.

5. I answer your fifth question in the affirmative. See Section 3, Act 411, supra. This portion of the act does not, in my opinion, conflict with the provisions of Sections 68, 104(24), and 281 of the Constitution of Alabama 1901, nor does it conflict with Amendment 92 thereto. See **Hall v. Underwood,** 258 Ala. 392, 63 So. 2d 683, and **Morgan County v. Edmonson,** 238 Ala. 522, 192 So. 274.

6. I answer your sixth question in the affirmative with, however, certain qualifications. I am unable to find any local provision of law dealing with the bonds of the county commissioners prior to the enactment of Act 411, supra. I, therefore, presume that the bonding of the county governing body was done under the provisions of the general law. Title 41, Section 75, Code of Alabama 1940 requires bonds in an amount to be set by the Circuit Judge not less than Three Thousand

Dollars ($3,000.00) and, pursuant to Section 73 of Title 41, supra, made payable to the State of Alabama.

I note, however, that Section 5 of Act No. 411, supra, requires a bond in the amount of Three Thousand Dollars ($3,000.00) to be made payable to Escambia County. I am, therefore, of the opinion that, if the present bonds exceed Three Thousand Dollars ($3,000.00), they should be renegotiated so as to effect a premium reduction for the county, there being no authority for the county to pay premiums on bonds in excess of Three Thousand Dollars ($3,000.00) after the effective date of Act 411, supra, and, in any event, the bonds should be amended to effect the change in the payee.

7. Section 7 of Act 411, supra, places the responsibility of keeping the minutes on the Board of County Commissioners as a whole. However, in my opinion, the board may, and should, designate one person the actual duty of keeping these minutes. I must point out, however, that the minutes must still be recorded with the Probate Judge. Title 12, Section 19, Code of Alabama 1940.

8. I answer your eighth question in the negative. I find no authority of law for furnishing transportation by the county to the county governing body and such was not, in my opinion, intended by the provisions of Act No. 11, supra. In this regard, I cite you to the specific provisions of Sections 4 and 9.

Under the general law, Title 12, Section 28, Code of Alabama 1940, as amended (Act No. 172, Acts of Alabama 1959, page 697), the county commissioners receive as "compensation" a per diem and mileage. Section 4 of Act 411, supra, authorizes as "entire compensation" an annual salary. Section 9 of said act specifically repeals an earlier expense allowance authorized under Act 349, Acts of Alabama 1953. I am, therefore, of the opinion that no transportation may be furnished for services rendered within the county.

9, 10 and 11. Act No. 410, Acts of Alabama 1963, Regular Session (H. B. 741), provides in Section 8 for an effective date of September 1, 1963. However, upon consideration of the very wording of other sections and taking all of Act No. 410 in pari materei with Act No. 411, supra, I am led to the inescapable conclusion that the intent of the Legislature was that this act should apply to the elected Chairman of the Board of County Commissioners to serve pursuant to Section 2 of Act No. 411, supra, rather than to the ex-officio chairman serving under the provisions of the temporary arrangements of Section 3. I note that the present purchasing plan is repealed in both acts. I am, therefore, of the opinion that, though Act No. 410 is effective as of September 1, 1963, the same cannot become operative until January 1965 and, in view of the repeal clause contained in Act 411, as well as Act 410, supra, the County is without an operative purchasing act until

that date, there being no general purchasing law in existence. The county may, however, by proper resolution, adopt a general purchasing system not inconsistent with other provisions of law.

12. I answer your twelfth question in the affirmative. I note distinct differences between the new Inferior Court of Escambia County, created under the provisions of Act No. 412, Acts of Alabama 1963, Regular Session (H. B. 743), and the old, created under Act 665, Acts of Alabama 1951, page 1143. I am, therefore, of the opinion that the judge may draw the increased salary at the effective date of the act.

See citations to answer to Question No. 5.

13. The constitutional prohibitions against increased salary apply only to those officials having "terms" of office. I find no local act dealing with the appointment of the Deputy Solicitor for Escambia County and, therefore, presume that this officer is appointed under the authority of the general law. Title 13, Section 256, Code of Alabama 1940. Section 256, supra, prescribes that this officer shall serve at the pleasure of the Circuit Solicitor. I am, therefore, of the opinion that the increase in salary authorized by Act 412, supra, may be paid beginning with the effective date.

14. I answer your fourteenth question in the affirmative. Act No. 413, Acts of Alabama 1963, Regular Session (H. B. 744), specifically provides for payment by the county of those salaries for designated deputies.

15. In my opinion, the Sheriff of Escambia County, under the provisions of Act 413, supra, should appoint a "Second Deputy" and so notify the county governing body of such appointment in order that the deputy might be added to the payroll. This notification, in my opinion, should be in the form of a letter of appointment.

Very truly yours,

RICHMOND M. FLOWERS
Attorney General

September 26, 1963

Hon. Virgil Nolen Price
Superintendent
Tallapoosa County Schools
Courthouse
Dadeville, Alabama

State Board of Adjustment — County Boards of Education — Buses — Insurance

1. The State Board of Adjustment will consider all claims for damages to the person or property of anyone involved in an accident with a school bus owned and operated by an agency of the State of Alabama.

2. The State Board of Adjustment is required to accept claims presented by public school students injured or killed as a result of any accident which occurs while being transported to or from school or in connection with any school activity regardless of whether the driver be a direct employee of the Board of Education or a contract driver for said Board.

3. The Board of Education may require a contract driver to carry a policy of liability insurance during the term of the contract.

Opinion by Assistant Attorney General Bradley.

Dear Sir:

Your request for an official opinion bearing date of September 2, 1963 is as follows:

"In Tallapoosa County we own and employ drivers to operate some school buses. Others are owned by independent contractors who either drive or employ drivers.

"It is our understanding that the State Board of Adjustment stands as an insuror for each claimant injured or damaged by a bus accident to a maximum of $13,500.

"These are some questions that the Tallapoosa County Board of Education want answered.

"1. Should we require contract operators to carry liability insurance and/or how should we advise them?

"2. Is it true that the Board of Adjustment will stand in the same position for an independent contract driver as for the driver of a school owned bus?

"3. What is the status of the contract bus used only for transporting students but while not actually transporting students?"

Title 55, Section 334, Code of Alabama 1940, as Recompiled 1958, provides, in pertinent part, as follows:

"The board of adjustment shall have the power and jurisdiction and it shall be its duty to hear and consider all claims for damages to the person or property growing out of any injury done to either the person or property by the state of Alabama or any of its agencies, commissions, boards; institutions or departments; * * * Also, all claims for injury or death of any student duly enrolled in any of the public schools of this state resulting from an accident sustained while being transported to or from school or in connection with any school activity in any bus or any motor vehicle operated directly by any school board or agency of the state or through contract with another. * * * Awards for such injuries or death shall constitute a prior and preferred claim against monies appropriated for the minimum program fund and no part of any such award shall be charged against any funds allotted to the school board of the county or city where said accident occurred. * * * "

As to your assumption that the State Board of Adjustment stands as an insurer for each claimant injured or damaged as a result of an accident in which a school bus is involved, I would like to point out, first, that the Board of Adjustment is not an insurer; and, second, that the above cited section of the Alabama Code relates to claims for injury or death of any **student** duly enrolled in any of the public schools of the State while being transported to or from school, or in connection with any school activity; claims for injury or death to the bus driver; and claims for injury, death or property damage to the other person or persons involved in a school bus accident.

Your question numbered one, whether you should require contract operators to carry liability insurance, calls for, in my opinion, a decision by each individual school board. However, if the school board wished, as a matter of policy, to require a contract driver to secure and maintain a policy of liability insurance as a part of his contract, to protect himself as well as anyone injured as a result of an accident for which he may be liable, it is my opinion it has the authority to do so. Title 52, Section 99, Code of Alabama 1940, as Recompiled 1958; **Shores v. Elmore County Board of Education,** 241 Ala. 464, 3 So. 2d 14. Also see Title 52, Section 71, Code of Alabama 1940, as Recompiled 1958; Quarterly Report of the Attorney General 1926-28, page 609; and Quarterly Report of the Attorney General Vol. 17, page 136.

As to your query about the procedure to follow in advising such contract drivers whether or not to acquire and maintain liability insurance, it would appear to me to be a matter for the board in their negotiations with the driver, prior to the completion of the contract.

This office does not make it a practice to answer abstract questions; however, for your information only, the answer to your second question is in the affirmative if you contemplate a claim being filed with the board by an injured student or by the parents or personal representative

of a deceased student as a result of a bus accident in which that student was riding to and from school or in connection with any school activity. Otherwise, it is in the negative.

The answer to your third question is that only claims arising in favor of students who have been injured or who have been killed as a result of being transported to and from school, or in connection with any school activity on a school bus operated either by the school board or by an agency which holds a contract with the school board for the operation of the bus will be considered. If the contract bus is being used for purposes other than transporting students of a public school to and from that school or in connection with an activity of the school, then the Board of Adjustment would not have jurisdiction to recognize any claims arising from such operation.

Very truly yours,

RICHMOND M FLOWERS

Attorney General

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QUARTERLY REPORT OF THE ATTORNEY GENERAL FOR THE PERIOD FROM JULY 1, 1963 THROUGH SEPTEMBER 30, 1963

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Biennial Report 1936-1938, page 668 17

Volume 11, page 126 17

Volume 17, page 49 17

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INFORMAL OPINIONS

During the period covered by this Quarterly Report of the Attorney General, July 1, 1963 through September 30, 1963, the Attorney General rendered the following informal opinions. These informal opinions are not published in the Quarterly Report.

Subject Matter	Name of Addressee	Date	File No.
CORPORATIONS			
Banks—Capitol Stock	Robert M. Cleckler	Aug 29	Banking Dept.
Charter Fee—Capitol Stock	John A. Sankey	Jul 19	762
Small Loans—Contracts	Lehman J. Lewis	Aug 20	Banking Dept.
Small Loans—Forms	Lehman J. Lewis	Sept 3	Banking Dept.
CORRECTIONS AND INSTITUTIONS, DEPARTMENT OF			
Convicts—Hospitals	A. F. Lee	Sept 26	Dept.
Equipment—Notes	A. F. Lee	Sept 9	Dept.
COSTS AND FEES			
Coroners—Post Mortems	Fred M. Griffith	Aug 22	173
Divorce—Security	O. B. Griffin	Jul 30	792
Judges of Probate—Eminent Domain	W. R. Stuart	Aug 16	200
Justice of Peace—Hard Labor	Herman Watson, Jr.	Aug 14	827
Justice of Peace—Hard Labor	Thomas D. McDonald	Aug 19	835
Justice of Peace—Venue	L. E Coleman	Sept 3	323

Subject Matter	Name of Addressee	Date	File No.
COUNTIES			
Agriculture—Appropriation	W. D. Rich	Jul 16	833
Civil Defense—Appropriations	R. Harold Young	Sept 19	874
Employees—Highways	C. D. Cameron	Jul 6	771
Employees—Retirement	Conrad M. Fowler	Sept 19	873
Hospitals—Discounts	W. C. Kingsberry	Aug 22	800
Property—Leases	Guy D. Roberts	Jul 25	787
Property—Leases	C. D. Cameron	Jul 31	771
Sheriffs—Uniforms	Hoyt B. Hamilton	Sept 25	134
CRIMINAL LAW			
Highways—Charges	Albert J. Lingo	Jul 29	Public Safety
Highways—Counts	Albert J. Lingo	Aug 1	Public Safety
Municipalities—Arrests	Millard Upton	Jul 9	559
Municipalities—Warrants	Bernice H. Centanne	Jul 17	193
Suicide—Crimes	Robert E. Litman	Aug 20	819
ELECTIONS			
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Electors—Residence	L. L Whitten	Aug 2	780
Municipalities—Government	W. M. Bush	Jul 1	730
Polls—Time	John W. Barbee	Aug 1	644
Registration—Absentee	Thomas C. McHale	Aug 1	779
Registration—Records	W. R. Stuart	Aug 30	200

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ABC Board—Transfer	John E. Lewis, Jr.	Jul 2	738
Docks—Waterways	Houston H. Feaster	Aug 1 & 26	State Docks
Liquefied Gas—Expenditures	Ed Pepper	Sept 24	Pub. Serv. Comm.
Public Service Commission—Attorneys	Ed Pepper	Jul 11	Pub. Serv. Comm.
U. S. Surplus Property—Contracts	A. R. Meadows	Sept 12	Education Dept.

HIGHWAYS AND HIGHWAY DEPARTMENT

Municipalities—Lighting	E. N. Rogers	Aug 9	Dept.
Rights of Way—U. S. Property	B. C. Goode	Jul 19	Dept.

INSURANCE

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County Commissioners—Expenses	J. G. Kimbrough	Jul 2	741
County Supt. of Education—Salaries	H. Mallory Grubbs	Jul 1	725
Hospital Trustees—Expenses	W. C. Kingsbury	Aug 9	800
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Licenses—Auctioneers	Carl E. Sellers	Aug 6	822
Licenses—Auctioneers	Max Jones	Aug 13	823
Licenses—Pool	O. D. Alsobrook	Jul 9	456
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Plumbers—U. S. Tax	A. W. Seier, Jr.	Sept 18	24
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